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**FINAL**  
**CITY COUNCIL**  
**CITY OF WICHITA**  
**KANSAS**

City Council Meeting  
09:00 a.m. October 18, 2016

City Council Chambers  
455 North Main

**OPENING OF REGULAR MEETING**

- Call to Order
- Invocation
- Pledge of Allegiance
- Approve the minutes of regular meeting on October 11, 2016

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**AWARDS AND PROCLAMATIONS**

- Proclamation:  
National Arts and Humanities Month

**I. PUBLIC AGENDA**

NOTICE: No action will be taken relative to items on this agenda other than referral for information. Requests to appear will be placed on a “first-come, first-served” basis. This portion of the meeting is limited to thirty minutes and shall be subject to a limitation of five minutes for each presentation with no extension of time permitted. No speaker shall be allowed to appear more frequently than once every fourth meeting. Members of the public desiring to present matters to the Council on the public agenda must submit a request in writing to the office of the city clerk prior to twelve noon on the Tuesday preceding the council meeting. Matter pertaining to personnel, litigation and violations of laws and ordinances are excluded from the agenda. Rules of decorum as provided in this code will be observed.

None

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**II. CONSENT AGENDA ITEMS 1 THROUGH 19**

NOTICE: Items listed under the “Consent Agendas” will be enacted by one motion with no separate discussion. If discussion on an item is desired, the item will be removed from the “Consent Agendas” and considered separately

*(The Council will be considering the City Council Consent Agenda as well as the Planning, Housing, and Airport Consent Agendas. Please see “**ATTACHMENT 1 – CONSENT AGENDA ITEMS**” for a listing of all Consent Agenda Items.)*

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**COUNCIL BUSINESS**

**III. UNFINISHED COUNCIL BUSINESS**

None

**IV. NEW COUNCIL BUSINESS**

1. Public Hearing and Approval of a Façade Improvement Project – 303 South Broadway. (District I)

RECOMMENDED ACTION: Close the public hearing, approve the façade easement and place the maximum assessment ordinance for the 303 South Broadway facade improvements on first reading.

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**COUNCIL BUSINESS SUBMITTED BY CITY AUTHORITIES**

**PLANNING AGENDA**

NOTICE:Public hearing on planning items is conducted by the MAPC under provisions of State law. Adopted policy is that additional hearing on zoning applications will not be conducted by the City Council unless a statement alleging (1) unfair hearing before the MAPC, or (2) alleging new facts or evidence has been filed with the City Clerk by 5p.m. on the Wednesday preceding this meeting. The Council will determine from the written statement whether to return the matter to the MAPC for rehearing.

**V. NON-CONSENT PLANNING AGENDA**

None

**HOUSING AGENDA**

NOTICE:The City Council is meeting as the governing body of the Housing Authority for consideration and action on the items on this Agenda, pursuant to State law, HUD, and City ordinance. The meeting of the Authority is deemed called to order at the start of this Agenda and adjourned at the conclusion. Andra Martin Housing Member is also seated with the City Council.

**Andra Martin Housing Member is also seated with the City Council.**

**VI. NON-CONSENT HOUSING AGENDA**

None



**AIRPORT AGENDA**

NOTICE: The City Council is meeting as the governing body of the Airport Authority for consideration and action on items on this Agenda, pursuant to State law and City ordinance. The meeting of the Authority is deemed called to order at the start of this Agenda and adjourned at the conclusion.

**VII. NON-CONSENT AIRPORT AGENDA**

None

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**COUNCIL AGENDA**

**VIII. COUNCIL MEMBER AGENDA**

1. **Approval of travel for Council Member Pete Meitzner to attend the Peer to Peer Transportation Visit in Seattle, Washington, October 24-26, 2016.**

RECOMMENDED ACTION: Approve the travel expenditures

**IX. COUNCIL MEMBER APPOINTMENTS AND COMMENTS**

1. **Board Appointments.**

RECOMMENDED ACTION: Approve the appointments.

Adjournment

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(ATTACHMENT 1 – CONSENT AGENDA ITEMS 1 THROUGH 19)

**II. CITY COUNCIL CONSENT AGENDA ITEMS**

1. Report of Board of Bids and Contracts dated October 17, 2016.

RECOMMENDED ACTION: Receive and file report; approve the contracts; and authorize the necessary signatures.

2. Applications for Licenses:

<u>Renewal</u>	<u>2016</u>	<u>Address</u>
Robert Floyd	Rock Road Gift Shop Inc. DBA Patricia's	3536 N. Rock Road Ste 200/300

RECOMMENDED ACTION: Approve the licenses.

3. Applications for Licenses to Retail Cereal Malt Beverages:

<u>Renew</u>	<u>2016</u>	<u>(Consumption on Premises)</u>
Jeff Clark	Ralph Wulz Riverside Tennis Center**	511 Nims

\*\*General/Restaurant (need 50% or more gross revenue from sale of food)

RECOMMENDED ACTION: Approve licenses subject to staff review and approval.

4. Preliminary Estimates:

- a. List of Preliminary Estimates.

RECOMMENDED ACTION: Receive and file.

5. Consideration of Street Closures/Uses:

- Community Events - Mustache Dash 5K. (Districts I and VI)
- Community Events - Girls on the Run Fall 5K. (Districts III and IV)
- Community Events – Hawaii 5.0K. (District II)
- Community Events - Haute Handmade Pop Up Market. (District VI)
- Community Events - Kansas Children's Literacy Festival. (District I)

RECOMMENDED ACTION: Approve the request subject to; (1) Hiring off-duty certified law enforcement officers as required; (2) Obtaining barricades to close the streets in accordance with requirements of Police, Fire and Public Works Department; and (3) Securing a Certificate of Liability Insurance on file with the Community Events Coordinator.

6. Minutes of Advisory Boards/Commissions:

Wichita Employee's Retirement System Board, August 17, 2016  
Police & Fire Retirement System Board, August 24, 2016  
Bicycle and Pedestrian Advisory Board, September 12, 2016

RECOMMENDED ACTION: Receive and file.

7. Approval of the Great Plains Nature Center Memorandum of Agreement between the U.S. Fish and Wildlife Service, the Kansas Department of Wildlife, Parks and Tourism and the City of Wichita. (District I)

RECOMMENDED ACTION: Approve the Memorandum of Agreement and authorize the necessary signatures.

8. Fire Apparatus Replacement.

RECOMMENDED ACTION: Approve the project, adopt the bonding resolution, and authorize the necessary signatures.

9. Payment for Settlement of Claim.

RECOMMENDED ACTION: Authorize payment of \$40,000 as full settlement of all possible claims arising out of the events which are the subject of this lawsuit and adopt the bonding Resolution.

10. Police Impound Towing Contracts.

RECOMMENDED ACTION: Approve the Police impound towing contracts and authorize the necessary signatures.

11. State Office Building Budget Adjustment. (District I)

RECOMMENDED ACTION: Approve the budget adjustment and authorize the necessary signatures.

12. Pracht Wetlands Park Design Services. (District V)

RECOMMENDED ACTION: Approve the vendor selection, approve the contract and scope of services and authorize all necessary signatures.

13. Second Reading Ordinances: (First Read October 11, 2016)

RECOMMENDED ACTION: Adopt the Ordinances.

## **II. CONSENT PLANNING AGENDA ITEMS**

NOTICE: Public hearing on planning items is conducted by the MAPC under provisions of State law. Adopted policy is that additional hearing on zoning applications will not be conducted by the City Council unless a statement alleging (1) unfair hearing before the MAPC, or (2) alleging new facts or evidence has been filed with the City Clerk by 5p.m. on the Wednesday preceding this meeting. The Council will determine from the written statement whether to return the matter to the MAPC for rehearing.

14. \*VAC2016-00032 - Request to Vacate a Utility Easement Referenced in the Plattor's Text on Property Generally Located on the East Side of North Hydraulic Avenue, North of East Central Avenue. (District I)

RECOMMENDED ACTION: Approve the Vacation Order and authorize the necessary signatures.

15. \*A16-03 - Request by the City of Wichita to Annex Cowskin Creek Drainage Right-of-Way Generally Located South of West Maple Street, Approximately One-Quarter Mile East of South Maize Road. (District IV)

RECOMMENDED ACTION: Approve the annexation request, place the ordinance on first reading, authorize the necessary signatures and instruct the City Clerk to publish the ordinance after approval on second reading.

## **II. CONSENT HOUSING AGENDA ITEMS**

NOTICE: The City Council is meeting as the governing body of the Housing Authority for consideration and action on the items on this Agenda, pursuant to State law, HUD, and City ordinance. The meeting of the Authority is deemed called to order at the start of this Agenda and adjourned at the conclusion.

**Andra Martin, Housing Member is also seated with the City Council.**

None

## **II. CONSENT AIRPORT AGENDA ITEMS**

NOTICE: The City Council is meeting as the governing body of the Airport Authority for consideration and action on items on this Agenda, pursuant to State law and City ordinance. The meeting of the Authority is deemed called to order at the start of this Agenda and adjourned at the conclusion.

16. \*Garver, LLC - Use and Lease Agreement - Wichita Dwight D. Eisenhower National Airport.

RECOMMENDED ACTION: Approve the Agreement and authorize the necessary signatures.

17. \*Caldwell Transport Company, LLC - Use and Lease Agreement - Wichita Dwight D. Eisenhower National Airport.

RECOMMENDED ACTION: Approve the Agreement and authorize the necessary signatures.

18. \*Integrated Airline Services, Inc. - Supplemental Agreement No. 1 - Wichita Dwight D. Eisenhower National Airport.

RECOMMENDED ACTION: Approve the supplemental agreement and authorize the necessary signatures.

19. **\*WAA Report of Board of Bids and Contracts dated October 17, 2016.**

RECOMMENDED ACTION: Receive and file the reports, approve the contracts and authorize the necessary signatures.

**City of Wichita  
City Council Meeting  
October 18, 2016**

**TO:** Mayor and City Council Members

**SUBJECT:** Public Hearing and Approval of a Façade Improvement Project – 303 South Broadway (District I)

**INITIATED BY:** Office of Urban Development

**AGENDA:** New Business

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**Recommendation:** Close the public hearing and place the maximum assessment ordinance on first reading.

**Background:** Since 2001, the City of Wichita has operated the Façade Improvement Program, which provides low-cost loans and grants to enhance the visual aesthetics of buildings located in defined areas needing revitalization, including the City’s core area. The low-cost loans are funded through special assessment financing. In 2009, the Façade Improvement Program was revised to require that private funding for overall project costs be at least equal to public funding and that applicants show a financial need for public assistance in order to complete the project, based on the owner’s ability to finance the project and assuming a market-based return on investment.

On October 4, 2016, the City Council accepted a petition to create a special assessment benefit district for a building located at 303 South Broadway and adopted a resolution setting a public hearing on the project for October 18, 2016. Adoption of a maximum assessment ordinance is needed in order to proceed with the façade improvement project.

**Analysis:** The overall project includes an estimated \$5,000,000 acquisition and renovation of a building located at 303 S. Broadway, which will convert the vacant and dilapidated Broadway Autopark Garage into apartments and commercial space. The \$620,000 facade project will include new windows and doors, enclosing the east and north sides of the building for apartments, historic preservation and additional work to restore the building and meet code requirements. The Office of Urban Development has reviewed the economic (“gap”) analysis of the project and determined a financial need for incentives based on the current market.

State law requires a formal public hearing to levy assessments for special assessment benefit districts. By using a maximum assessment ordinance, the City levies the assessments in advance of the improvements being constructed, which protects the City from a protest petition should the building change ownership during the construction period. Once the construction is complete and final costs are known, including financing costs, the assessment ordinance will be amended to reflect the actual costs, which may be lower than the original maximum amount.

The City’s Façade Program Policy requires developers to provide the City with acceptable surety, such as a letter of credit, to ensure that the City will be reimbursed for any façade expenditures in the event the City cannot levy special assessment taxes on the improved property. In this case, in lieu of a letter of credit, the property owner will pay the construction costs until the façade project is complete and special assessments can be placed on the property. Once the project is complete, as evidenced by an architect’s certificate of completion, the City will reimburse the property owner for documented eligible façade costs. Once special assessment bonds are issued, the City’s risk will be secured by a tax lien on the property.

**Financial Considerations:** The proposed maximum assessment amount is \$620,000, based on the following uses of funds:

Façade improvement costs	\$484,513
10% Construction Contingency	48,451
2% City administrative fee	9,690
Financing costs	<u>77,346</u>
Maximum Assessment	620,000

The façade improvement costs include a 10% contingency amount to cover any unexpected expense, in order to avoid the possible need to increase the maximum assessment. The actual amount to be assessed to the property, not to exceed \$620,000, will be based on a final statement of costs following completion of construction and will be financed with 15-year special assessment general obligation bonds. Included in the financing costs will be a reserve equivalent to one year's debt service to mitigate risk. Any unused reserve will be used to make the final special assessment payment.

**Legal Considerations:** The attached Maximum Assessment Ordinance and Façade Easement have been approved as to form by the Law Department. State statutes provide the City Council authority to use special assessment funding for the project. A public hearing is required as part of the approval process. The actual amount to be assessed at the completion of construction may be less, but it may not exceed the amounts included in the petition, resolution and ordinance.

**Recommendation/Action:** It is recommended that the City Council close the public hearing, approve the façade easement and place the maximum assessment ordinance for the 303 South Broadway facade improvements on first reading.

**Attachments:**       Maximum Assessment Ordinance  
                              Façade Easement

***When Recorded Return to:***  
City of Wichita, Kansas  
Office of Urban Development  
455 N. Main, 13<sup>th</sup> Floor  
Wichita, Kansas 67202

**FACADE EASEMENT  
FACADE IMPROVEMENT PROGRAM**

**THIS FACADE EASEMENT** made as of October 18, 2016, by and between Broadway AutoPark Building, LLC, hereinafter called “Grantor,” and the City of Wichita, Kansas, hereinafter called “Grantee” or “City”:

**WITNESSETH THAT,**

**WHEREAS,** the Grantee is a municipal corporation pursuant to state law; and

**WHEREAS,** the Grantee is authorized pursuant to K.S.A. 12-6a01 *et. seq.* (the “Act”) to make or cause to be made improvements which confer a special benefit upon a property within a definable area of the City; and,

**WHEREAS,** the Grantee may levy and collect special assessments upon property deemed by the City Council (the “Governing Body”) to be benefited by such improvement; and,

**WHEREAS,** the Grantee may acquire an interest in property when necessary for any of the purposes set forth in the Act; and,

**WHEREAS,** the Grantee is authorized to accept easements necessary for improvements to be financed through special assessment financing pursuant to the Act; and,

**WHEREAS,** the Grantor is the owner in fee simple of the improved real property consisting of a lot and building improvements located at 303 South Broadway, Wichita, Kansas (the “Premises”), the legal description for which is set forth on ***Exhibit A*** attached hereto and incorporated herein by reference; and,

**WHEREAS,** the Grantor has submitted a Facade Improvement Petition for special assessment financing to improve, restore and enhance the facade of the Premises; and,

**WHEREAS,** the grant of a facade easement by the Grantor to the Grantee will assist in the improvement of the Premises.

**NOW, THEREFORE,** in consideration of the sum of one dollar (\$1.00), and other good and valuable considerations, the receipt and sufficiency of which is hereby acknowledged, the Grantor does hereby grant, bargain, sell and convey to the Grantee, its successors and assigns, a 15 year facade easement in and to the Premises. The easement granted in the Premises shall constitute a binding servitude upon the Premises and shall be deemed to run with the said Premises for a period of 15 years, with said fifteen year period being contemporaneous with the period of time that the Premises are encumbered with special assessment payments related to improvements made to its facade. As a further condition of said easement, Grantor agrees to the following covenants, restrictions and obligations related to said facade:



1. Without the express written consent of the Grantee, signed by an authorized representative of the Grantee, no construction, alteration, remodeling or other action shall be undertaken or permitted to be undertaken which would affect the exterior facade improvements on the Premises (including, without limitation the exterior walls, the roofs or chimneys) or which would adversely affect the structural soundness of improvements on the Premises. In the event the Grantee does consent to construction, alteration, remodeling or other action which would affect the exterior facade of improvements on the Premises, the Grantor agrees that such construction, alteration, remodeling or other action will conform with applicable local, state and federal standards for construction or restoration or rehabilitation of historic property. Grantor agrees on behalf of itself and any successor condominium owners association at all times to maintain the Premises in good and sound state of repair and to bear the cost of all maintenance and repair of the Premises.

2. The Premises shall not be divided, diminished or subdivided nor shall the Premises ever be devised or conveyed except that the Premises may be divided into condominium units, the units may be conveyed to buyers, and the remainder of the Premises may be conveyed to a condominium owners association.

3. The Premises shall only be used for a use consistent with the zoning ordinances of the City.

4. No other structures may be constructed on the Premises during the term of this facade easement without the express written permission of the Grantee, signed by an authorized representative of the Grantee.

5. No utility transmission lines, except those required by the existing structures or by structures permitted by the Grantee, may be placed on or over the Premises.

6. No topographical changes shall be made or allowed on the Premises without the express written permission of the Grantee, signed by an authorized representative of the Grantee.

7. Grantor agrees that representatives of the Grantee, its successors or assigns, shall be permitted at all reasonable times to inspect the Premises. Inspections will normally take place on the exterior of the structures on the Premises; however, Grantor agrees that representatives of the Grantee, its successors and assigns, shall be permitted to enter and inspect the structures on the Premises to insure maintenance of structural soundness. Inspection of the interior of the structures will not take place more often than annually, in the absence of deterioration, and shall require prior notice to Grantor. Inspection of the interior of the structures will be made at a time mutually agreed upon by the Grantor and Grantee, its successors or assigns, and Grantor will not unreasonably withhold its consent in determining a date and time for such inspections.

8. In the event of a violation of any covenant or restriction herein, the Grantee, its successors and assigns, following no less than thirty (30) days notice to Grantor of the violation, may institute suit to enjoin such violation and to require restoration of the Premises in compliance with the covenants or restrictions herein. The Grantee, its successors or assigns, shall also have available all legal and equitable remedies to enforce Grantor's obligations hereunder (following expiration of the thirty (30) day notice and cure period set forth above), and in the event Grantor is found to have violated any of its obligations following expiration of such notice and cure period, Grantor shall reimburse Grantee, its successors and assigns, for any costs or expenses incurred in connection therewith, including court costs and reasonable attorneys' fees. In addition, Grantor acknowledges that the Grantee has advanced or will advance \$620,000 in public funds to defray costs of a portion of Grantor's façade improvements, and Grantor further acknowledges that, in the event of Grantor's violation of any covenant or restriction herein contained for the preservation, maintenance or repair of the façade improvements during the term of this easement, the

Grantee will not have received the social and economic development benefits expected in connection with its advance of public funds, and the resulting loss to the Grantee will be difficult to measure. In such event, the Grantor covenants to repay to the Grantee, on demand, as contractual or liquidated damages, the amount advanced.

**9.** Grantor agrees that these covenants and restrictions will be inserted by it in any subsequent deed or other legal instrument by which it divests itself of either the fee simple title or its possessory interest in the Premises, or any part thereof during the term of this facade easement. Grantor agrees to give Grantee written notice of any sale or mortgage of the Premises or any part thereof within a reasonable time after such sale or mortgage.

**10.** Grantor agrees to maintain the facades of the Premises in its original condition and configuration or in a condition or configuration which is agreed to by the Grantee.

**11.** Nothing herein contained shall impose any obligation or liability on the Grantee for the restoration, renovation, preservation or maintenance of the facades of the Premises or any part of the Premises. The Grantor shall indemnify and hold harmless the Grantee from any liability for any and all claims, demands, damages, judgments, costs or expenses in connection with the restoration, renovation, preservation and maintenance of the facades of the Premises or any part thereof or in connection with the failure to restore, renovate, preserve or maintain the facades of the premise or any part of the Premises.

**12.** The Grantor shall maintain insurance on the Premises in such amount and on such terms as will allow the Grantee to restore, repair or rebuild the facade of the Premises in the event the facade is damaged or destroyed. In the event of damage to or destruction of the facades of the Premises, the Grantor alone may determine that the facade of the Premises cannot be reasonably restored, repaired or reconstructed. In such event, the Grantee shall be entitled to receive from the Grantor the greater of the following: the fair market value of the easement granted herein at the time the easement was granted or the fair market value of the easement granted herein immediately before the facade of the Premises was damaged or destroyed. However, any payment to the Grantee under the terms of this paragraph shall not terminate the easement granted herein, and the terms of the easement which are still applicable to the Premises shall remain in full force and effect. The provisions of this paragraph shall apply whether or not the Grantor maintains the insurance coverage required by this paragraph. In the event the Grantee receives any payment under the terms of this paragraph, the Grantee shall use such payment in a manner consistent with the purpose of this easement.

**13.** Grantor acknowledges that the easement granted herein gives rise to a property right, vested immediately, with fair market value that is a minimum ascertainable portion of the fair market value of the Premises. Thus, if a subsequent unexpected change in the conditions surrounding the Premises makes it impossible or impracticable to preserve the Premises for the purposes for which the easement was granted and restrictions imposed by the easement granted herein are terminated by judicial proceedings, the Grantee, on a subsequent sale, exchange or involuntary conversion of the Premises, will be entitled to a portion of the proceeds determined in accordance with the ratio that the fair market value of the easement granted herein determined on the date of this Facade Easement is executed, unless state law determines that the Grantor is entitled to full proceeds from the conversion without regard to the terms of the prior restrictions imposed by the Facade Easement. In the event the Grantee receives such proceeds from the subsequent sale, exchange or involuntary conversion of the Premises, the Grantee shall use such proceeds in a manner consistent with the terms conservation/enhancement purposes of the easement.

The covenants and restrictions imposed by the aforesaid, shall not only be binding upon the Grantor, but also upon its heirs, assigns, and all other successors in interest, and shall continue as a servitude running for the fifteen year term of the Facade Easement with the land and shall survive the Grantor and

any termination of the Grantor's existence. All rights reserved herein to the Grantee shall run for the benefit of and be exercised by its successors, assigns, or by its designee duly authorized.

[BALANCE OF THIS PAGE INTENTIONALLY LEFT BLANK]

**IN WITNESS WHEREOF**, the parties hereto have executed in counterpart these presents as of the day and year first above written.

**GRANTOR:**

Broadway AutoPark Building, LLC

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**ACKNOWLEDGMENT**

STATE OF [\_\_\_\_\_] )  
 ) SS:  
COUNTY OF [\_\_\_\_\_] )

This instrument was acknowledged before me on \_\_\_\_\_, by \_\_\_\_\_, [Title]  
of [Property Owner].

[SEAL]

\_\_\_\_\_  
Notary Public

My Appointment Expires:

\_\_\_\_\_

**IN WITNESS WHEREOF**, the parties hereto have executed in counterpart these presents as of the day and year first above written.

**GRANTEE:**

CITY OF WICHITA, KANSAS

(SEAL)

\_\_\_\_\_  
Jeff Longwell, Mayor

**ATTEST:**

\_\_\_\_\_  
Karen Sublett, City Clerk

**ACKNOWLEDGMENT**

STATE OF KANSAS                    )  
                                              ) SS:  
COUNTY OF SEDGWICK            )

This instrument was acknowledged before me on \_\_\_\_\_, by Jeff Longwell, Mayor and Karen Sublett, City Clerk of the City of Wichita, Kansas, a municipal corporation.

[SEAL]

\_\_\_\_\_  
Notary Public

My Appointment Expires:

\_\_\_\_\_  
**APPROVED AS TO FORM:**

\_\_\_\_\_  
Jennifer Magaña, City Attorney and Director of Law

***Exhibit A***

**Property Subject to Easement**

An easement for construction and preservation of façade improvements on the façade of certain buildings currently addressed at 303 South Broadway, in the City of Wichita, Kansas, abutting public ways on Broadway Avenue and English Street, in such City, together with easements for ingress, egress and access to the said facades as necessary for such purposes, all on that property described as:

**Lots 46, 48, 50, 52, 54 and 56, on Lawrence now Broadway Avenue, in Greiffenstein's Addition to the Town of Wichita, Sedgwick County, Kansas, together with a portion of Lawrence now Broadway Avenue as vacated by City of Wichita Ordinance No. 140 and which adjoins said Lots on the East**

## ASSESSMENT ROLL CERTIFICATION

The undersigned Finance Director of the City of Wichita, Kansas (the “City”) having been designated by the City Council to determine the amounts of the respective assessments and to prepare the proposed Maximum Assessment Roll therefor in connection with certain internal improvements heretofore authorized by the governing body hereby reports that each and all of said respective assessments have been determined to be as shown on the Schedule(s) attached hereto and made a part hereof by reference as though fully set out herein.

Dated [\_\_\_\_\_].

By \_\_\_\_\_  
Finance Director

***SCHEDULE I***

**(FAÇADE IMPROVEMENTS – 303 S. BROADWAY)  
RESOLUTION NO. 16-389**

<b>Description of Property</b>	<b>Amount of Proposed Maximum Assessment</b>
Lots 46, 48, 50, 52, 54 and 56, on Lawrence now Broadway Avenue, in Greiffenstein's Addition to the Town of Wichita, Sedgwick County, Kansas, together with a portion of Lawrence now Broadway Avenue as vacated by City of Wichita Ordinance No. 140 and which adjoins said Lots on the East	\$620,000.00
Commonly known as 303 S. Broadway	



## ORDINANCE NO. 50-345

### AN ORDINANCE LEVYING AND ASSESSING MAXIMUM SPECIAL ASSESSMENTS ON CERTAIN LOTS, PIECES AND PARCELS OF PROPERTY LIABLE FOR SUCH SPECIAL ASSESSMENTS TO PAY THE COSTS OF INTERNAL IMPROVEMENTS IN THE CITY OF WICHITA, KANSAS (FAÇADE IMPROVEMENTS – 303 S. BROADWAY).

**WHEREAS**, pursuant to Resolution No. 16-389 (the “Resolution”), the City Council (the “Governing Body”) of the City of Wichita, Kansas (the “City”) has authorized, pursuant to K.S.A. 12-6a01 *et seq.* (the “Act”) the creation of an improvement district (the “Improvement District”) and the construction of the following improvements therein:

Construction of improvements to area walls on public ways or land abutting thereto consisting of Facade Improvements (the “Improvements”) at 303 South Broadway; and

**WHEREAS**, prior to commencement of construction of the Improvements, the City has determined the maximum amount of assessment against each lot, piece or parcel of land deemed to be benefited by the Improvements based on the approved estimate of cost of the Improvements and has held a public hearing on the proposed maximum special assessments to be levied against property in the Improvement District for the cost of the Improvements after providing notice of such hearing as required by the Act.

**NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:**

**Section 1. Levy of Assessments.** Pursuant to the Act, special assessments to pay the costs of the Improvements are hereby levied and assessed the amounts against the lots, pieces and parcels of land liable therefore as described on *Exhibit A* to this Ordinance, which is incorporated herein by reference; provided, however, that if the final cost of the completed Improvements is less than the maximum amount of the assessments set forth on *Exhibit A*, the Governing Body shall adjust the assessments to reflect the cost of the completed Improvements. If any property owner elects to prepay the maximum assessment as provided in **Section 2** and the final cost of the completed Improvements as determined by the Governing Body is less than the estimated cost of the Improvements used to determine the maximum assessments, the City Clerk shall mail a check to the then current owner of the property for the difference.

**Section 2. Payment of Assessments.** The amounts so levied and assessed in **Section 1** shall be due and payable from and after the date of publication of this Ordinance; and the City Clerk shall notify the owners of the affected properties of the amounts of their assessments, that unless the assessments are paid by November 30, 2016, unless extended by action of the Governing Body, following which notice of the extended date shall be mailed to the owners of record of all property in the Improvement District (the “Prepayment Date”), bonds will be issued therefore and such assessments will be levied concurrently with general taxes.

**Section 3. Certification.** Any amount of special assessments not paid within the time prescribed in **Section 2** hereof shall be certified by the City Clerk to the County Clerk of Sedgwick County, Kansas, in the same manner and at the same time as other taxes are certified and will be collected in 15 annual installments, together with interest on such amounts at a rate not exceeding the maximum rate therefor as prescribed by the Act. Interest on the assessed amount remaining unpaid between the effective date of this Ordinance and the date the first installment is payable, but not less than the amount of interest due during the coming year on any outstanding bonds issued to finance the Improvements, shall be added

to the first installment. The interest for one year on all unpaid installments shall be added to each subsequent installment until paid.

**Section 4. Effective Date.** This Ordinance shall take effect and be in force from and after its passage by the Governing Body and publication once in the official City newspaper. The City Clerk is directed to file this Ordinance with the Register of Deeds of Sedgwick County, Kansas.

**PASSED** by the City Council of the City on October 25th 2016 and **SIGNED** by the Mayor.

(SEAL)

---

Jeff Longwell, Mayor

ATTEST:

---

Karen Sublett, City Clerk

APPROVED AS TO FORM:

---

Jennifer Magaña, City Attorney and Director of Law

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## CERTIFICATE

I hereby certify that the foregoing is a true and correct copy of the original ordinance; that said Ordinance was passed on [\_\_\_\_\_]; that the record of the final vote on its passage is found on page \_\_\_\_ of journal \_\_\_\_; and that the Ordinance or a summary thereof was published in *The Wichita Eagle* on [\_\_\_\_\_].

DATED: [\_\_\_\_\_].

---

Karen Sublett, City Clerk

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*Exhibit A*

**(FAÇADE IMPROVEMENTS – 303 S. BROADWAY)  
RESOLUTION No. 16-389**

<b>Description of Property</b>	<b>Amount of Maximum Assessment</b>
Lots 46, 48, 50, 52, 54 and 56, on Lawrence now Broadway Avenue, in Greiffenstein's Addition to the Town of Wichita, Sedgwick County, Kansas, together with a portion of Lawrence now Broadway Avenue as vacated by City of Wichita Ordinance No. 140 and which adjoins said Lots on the East	\$620,000.00
Commonly known as 303 S. Broadway	



Wichita, Kansas  
October 17, 2016  
10:00 a.m., Monday  
Conference Room, 12<sup>th</sup> Floor

#### MINUTES - BOARD OF BIDS AND CONTRACTS\*

The Board of Bids and Contracts met with Marty Strayer, Administrative Assistant, Public Works and Utilities, Fanny Chan, Accountant, Finance, representing the Director of Finance, John Page, Budget Analyst, Budget Office, Clarence Rose, Senior Buyer, representing Purchasing, and Jamie Hayes, Deputy City Clerk, present.

Minutes of the regular meeting date October 10, 2016, were read and on motion approved.

Bids were opened October 14, 2016, pursuant to advertisements published on:

**Water Distribution System 448-90750 (735560), Lateral 36, Main 19 SWI 468-85143 (744426), SWS #710 468-85144 (751547), Tyler's Landing 6<sup>th</sup> Addition. (District V)**

Defer one week

Purchasing Manager recommended that the contracts be deferred as outlined above, subject to check, same being the lowest and best bids within the Engineer's construction estimate.

On motion the Board recommended that the contracts be deferred as outlined above, subject to check, same being the lowest and best bids within the Engineer's construction estimate.

#### **PUBLIC WORKS & UTILITIES DEPARTMENT/SEWAGE TREATMENT DIVISION: Solidify Disposal Non-Hazardous Waste.**

Reddi Industries, Inc. \*- \$23,330.00

\*Estimate – Contract approved on unit cost basis; refer to attachments

#### **HOUSING & COMMUNITY SERVICES DEPARTMENT/PUBLIC HOUSING DIVISION: Replace Roof at 2 Residential Sites.**

New Windows for America, LLC - \$16,800.00

#### **HOUSING & COMMUNITY SERVICES DEPARTMENT/PUBLIC HOUSING DIVISION: Replace 750 Gallon Hot Water Tank.**

Commercial Trade Services, LLC - \$40,360.00

#### **PUBLIC WORKS & UTILITIES DEPARTMENT/FLEET & FACILITIES DIVISION: Supply and Install Modular Furniture at the Park Forestry Building, 1205 S. McLean.**

John A Marshall Company \*- \$61,880.96 per the State of Kansas Contract No. 30880AD

\*Purchases Utilizing Government Entities Contracts Cooperative Contracts and Agreements Ordinance No. 38-122 Section 2.64.020 (j)

The Purchasing Division recommended that the contracts be awarded as outlined above, same being the lowest and best bid.

On motion the Board recommended that the contracts be awarded as outlined above, same being the lowest and best bid.

On motion the Board of Bids adjourned.

---

Marty Strayer, Administrative Assistant  
Department of Public Works and Utilities

---

Jamie Hayes, CMC  
Deputy City Clerk

## FORMAL BID REPORT

TO: Robert Layton, City Manager  
 DATE: October 17, 2016

**ENGINEERING BIDS – GARY JANZEN, CITY ENGINEER****October 14, 2016**

Water Distribution System to serve Tyler's Landing 6<sup>th</sup> Addition – Public Works & Utilities  
 Department/Engineering Division (Defer to October 24, 2016)

**PURCHASING BIDS – MELINDA A. WALKER, PURCHASING MANAGER****October 14, 2016**

Solidification and Disposal of Non-Hazardous Liquid Waste – Public Works & Utilities Department/Sewage  
 Treatment Division

**Reddi Industries, Inc. Service of Solidification of Disposal of all Non- (Per Pound) \$0.058**  
**Hazardous Liquid Waste**

**Provide Pick-Up Service (1,000 to 1,200 gallons per load) (Per Each) \$330.00**

Replace Roof & Gutter at 3402 S. Leonine and 7015 W. Newell – Housing & Community Services  
 Department/Public Housing Division

**New Windows for America, LLC \$16,800.00**

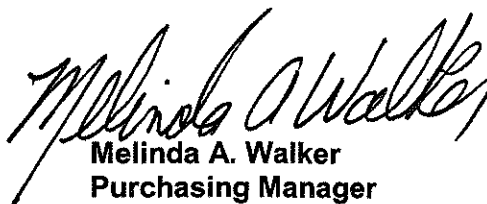
Replacement of 750 Gallon Hot Water Storage Tank at McLean Manor – Housing & Community Services  
 Department/Public Housing Division

**Commercial Trade Services, LLC \$40,360.00**

Supply and Install Modular Furniture at the Park Forestry Building – Public Works & Utilities Department/Fleet  
 & Facilities Division

**John A. Marshall Company Cooperative Contacts and Agreements, Ordinance \$61,880.96**  
**No. 38-122, Section 2.64.020(j), State of Kansas**  
**Contract # 30880AD**

ITEMS TO BE PURCHASED AS ADVERTISED IN THE OFFICIAL CITY NEWSPAPER.



Melinda A. Walker  
 Purchasing Manager



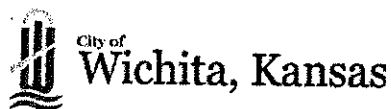
## WATER/SS/SWS BID TABULATION SUMMARY

BOARD OF BIDS - October 14, 2016

RQ641083

FB640197		Engineer's Construction Estimate	Dondlinger & Sons	Duling Construction	Dutton Construction & Plumbing LLC
Water Distribution System 448-90750 (735560)	Group 1		\$12,255.00	\$15,592.00	
Lateral 36, Main 19 SWI 468-85143 (744426)	Group 2		\$22,992.00	\$33,246.00	
SWS #710 468-85144 (751547)	Group 3		\$41,145.00	\$58,230.00	
Tyler's Landing 6th Addition	BID BOND				
	ADDENDA	3			
<b>BID TOTAL</b>		\$0.00	\$76,392.00	\$107,068.00	
		Engineer's Construction Estimate	McCullough Excavation	Mies Construction	Nowak Construction
Water Distribution System 448-90750 (735560)	Group 1			\$11,630.00	\$12,518.00
Lateral 36, Main 19 SWI 468-85143 (744426)	Group 2			\$22,513.00	\$25,265.50
SWS #710 468-85144 (751547)	Group 3			\$48,771.00	\$50,198.00
Tyler's Landing 6th Addition	BID BOND				
	ADDENDA	3			
<b>BID TOTAL</b>		\$0.00		\$82,914.00	\$87,981.50
		Engineer's Construction Estimate	Stannard Construction d/b/a WB Carter	Wildcat Construction	Wilks Underground Utilities
Water Distribution System 448-90750 (735560)	Group 1				\$11,495.00
Lateral 36, Main 19 SWI 468-85143 (744426)	Group 2				\$24,175.25
SWS #710 468-85144 (751547)	Group 3				\$52,743.00
Tyler's Landing 6th Addition	BID BOND				
	ADDENDA	3			
<b>BID TOTAL</b>		\$0.00			\$88,413.25
DEFER 1 WEEK					

CHECKED BY: kpREVIEWED BY: sm

**BID RESULTS**[Registration](#)[Solicitations](#)[Document Inquiry](#)[Login](#)[Help](#)

This page summarizes vendor responses by the bid total. Awarded vendors will be notified of their respective purchase orders/contracts.

Vendor	Group	Line
--------	-------	------

**Solicitation:**  
FB640196

**Solidify/Disposal Non-Hazardous  
Waste**

**Close Date/Time:** 10/14/2016 10:00  
AM CST

**Solicitation Type:** Formal Bid

[Return to the Bid List](#)

**Award Method:** Aggregate Cost

**Department:** Public Works & Utilities

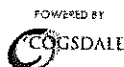
**Responses:** 1

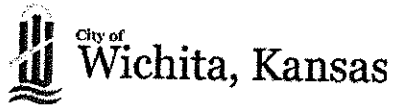
Vendors	Complete	Bid Total
REDDI INDUSTRIES INC	Complete	\$23,330.00

**City Comments**

Award 10/18/2016 Public Works  
& Utilities Dept/Sewage  
Treatment Division

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This page summarizes vendor bids by the extended cost for each commodity line on the solicitation.

Vendor Group Line

Solicitation:  
FB640196Solidify/Disposal Non-Hazardous  
WasteClose Date/Time: 10/14/2016 10:00  
AM CST

Solicitation Type: Formal Bid

[Return to the Bid List](#)

Award Method: Aggregate Cost

Department: Public Works &amp; Utilities

Responses: 1

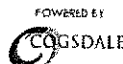
Go to: 

Line 001 | Service of Solidification of Disposal of all Non-Hazardous Liquid Waste as per specifications. Location of Facility: \_\_\_\_\_

Vendors	QTY	UOM	Price	Extended Cost	Complete	Comments
REDDI INDUSTRIES INC	260000	Pound	\$0.0580	\$15,080.00	Complete	

Line 002 | Provide Pick-Up Service (1,000 to 1,200 gallons per load) at the Sewage Treatment Plant #2, 2357 E. 57th Street South, Wichita, Kansas as per specifications. Bid Cost per Load. Includes Decanting Material and Off-Loading all free water at Plant #2 under the supervision of Sewage Treatment Plant Operation's Staff.

Vendors	QTY	UOM	Price	Extended Cost	Complete	Comments
REDDI INDUSTRIES INC	25	Each	\$330.0000	\$8,250.00	Complete	

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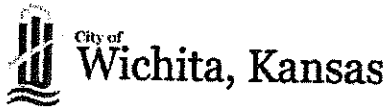
**BID RESULTS**[Registration](#)[Solicitations](#)[Document Inquiry](#)[Login](#)[Help](#)

This page summarizes vendor responses by the bid total. Awarded vendors will be notified of their respective purchase orders/contracts.

**Vendor Group Line****Solicitation:** FB640199 **Replace Roof at 2 Residential Sites****Close Date/Time:** 10/14/2016 10:00 AM CST**Solicitation Type:** Formal Bid[Return to the Bid List](#)**Award Method:** Aggregate Cost**Department:** Housing & Community Services**Responses:** 3

Vendors	Complete	Bid Total	City Comments
NEW WINDOWS FOR AMERICA LLC	Complete	\$16,800.00	Award 10-18-16 Housing & Community Services Dept./Public Housing Division
S & A CONSTRUCTION INC	Complete	\$22,551.00	
AARON PARSONS PAINTING, LLC	Complete	\$30,668.66	

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**BID RESULTS**[Registration](#)[Solicitations](#)[Document Inquiry](#)[Login](#)[Help](#)

This page summarizes vendor bids by the extended cost for each commodity line on the solicitation.

Vendor Group Line

Solicitation: FB640199 Replace Roof at 2 Residential Sites

Close Date/Time: 10/14/2016 10:00 AM CST

Solicitation Type: Formal Bid

[Return to the Bid List](#)

Award Method: Aggregate Cost

Department: Housing &amp; Community Services

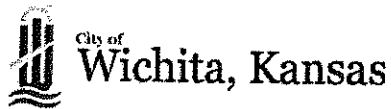
Responses: 3

Go to: 

**Line 001** | Labor, Material, and Equipment for Roof and Gutter Replacement and All Other Items Outlined in the Scope of Work as per Specifications at 3402 S. Leonine and 7015 W. Newell. For Questions, Contact Leon Salazar at (316) 462-3787.

Vendors	QTY	UOM	Price	Extended Cost	Complete	Comments
NEW WINDOWS FOR AMERICA LLC	1	Lump Sum	\$16,800.0000	\$16,800.00	Complete	
S & A CONSTRUCTION INC	1	Lump Sum	\$22,551.0000	\$22,551.00	Complete	
AARON PARSONS PAINTING, LLC	1	Lump Sum	\$30,668.6600	\$30,668.66	Complete	

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**BID RESULTS**[Registration](#)[Solicitations](#)[Document Inquiry](#)[Login](#)[Help](#)

This page summarizes vendor responses by the bid total. Awarded vendors will be notified of their respective purchase orders/contracts.

**Vendor Group Line**

**Solicitation:** FB640200 **Replace 750 Gallon Hot Water Tank** **Close Date/Time:** 10/14/2016 10:00 AM CST

**Solicitation Type:** Formal Bid[Return to the Bid List](#)**Award Method:** Aggregate Cost**Department:** Housing & Community Services**Responses:** 1

Vendors	Complete	Bid Total	City Comments
COMMERCIAL TRADE SERVICES LLC	Complete	\$40,360.00	Award 10-18-16 Housing & Community Services Dept./Public Housing Division

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**BID RESULTS**[Registration](#)[Solicitations](#)[Document Inquiry](#)[Login](#)[Help](#)

This page summarizes vendor bids by the extended cost for each commodity line on the solicitation.

Vendor    Group    Line

Solicitation: FB640200    Replace 750 Gallon Hot Water Tank    Close Date/Time: 10/14/2016 10:00 AM CST

Solicitation Type: Formal Bid

[Return to the Bid List](#)

Award Method: Aggregate Cost

Department: Housing &amp; Community Services

Responses: 1

Go to: 

**Line 001** | Labor, Material, and Equipment for the Replacement of 750 Gallon Hot Water Storage Tank at McLean Manor, 2627 W 9th St. North, as per Specifications and Drawings. For Questions, Contact Leon Salazar (316)462-3787

Vendors	QTY	UOM	Price	Extended Cost	Complete	Comments
COMMERCIAL TRADE SERVICES LLC	1	Lump Sum	\$40,360.0000	\$40,360.00	Complete	

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October 17, 2016

**Purchases Utilizing Government Entities Contracts  
Cooperative Contracts and Agreements  
Ordinance No. 38-122 Section 2.64.020 (j)**

**SUBJECT:** Supply and Install modular Furniture at the Park Forestry Building,  
1205 S. McLean

Department: Public Works & Utilities Department/Fleet & Facilities Division

Vendor	Reference Authority	Total Cost
John A Marshall Company, per the State of Kansas Contract #30880AD for Furniture, Herman Miller	Ordinance No. 38-122 Section 2.64.020 (j)	\$61,880.96





CITY LICENSE  
(316) 268-4553  
www.wichita.gov

RECEIVED  
LICENSE

FEB 16 2016

New \_\_\_\_\_  
Renewal ☒

ADULT ENTERTAINMENT/HOTEL  
LICENSE APPLICATION

Bookstore

Fee: \$100.00 per year

Adult Entertainment ☒  
Adult Hotel \_\_\_\_\_

**BUSINESS INFORMATION**

NAME	Rock Head Gift Shop Inc. DBA: Patricia's		PHONE	316 201-1884	
OWNER OF PREMISES	3536 N. Rock Road, Ste 200 & 300				
ADDRESS	ZIP 67226				
MAILING ADDRESS/ ZIP	408 NE 145th Place OKC, OK 73113		HRS & DAYS OF OPERATIONS	7:00AM To Midnight	

**APPLICANT INFORMATION** ( must be completed by person whose signature appears at bottom of application):

NAME	Robert Floyd		ALIAS/MAIDEN NAME		
RESIDENTIAL ADDRESS	408 NE 145th Place OKC, OK		ZIP	73113	
LENGTH OF RESIDENCY:	KANSAS	- 0 -	SEDGWICK COUNTY	- 0 -	
HOME PHONE	405 524-4775	DATE OF BIRTH	3-8-46	RACE	C GENDER M
EMAIL					

**CORPORATION** (IF APPLICABLE): Please provide the following information for all officers, directors, and each stockholder holding more than 5% of stock in the corporation. If more space is needed, use blank sheets to answer each question.

NAME	Same		ALIAS/MAIDEN NAME		
RESIDENTIAL ADDRESS			ZIP		
LENGTH OF RESIDENCY:	KANSAS		SEDGWICK COUNTY		
HOME PHONE		DATE OF BIRTH		RACE	GENDER

**PARTNERSHIP** (IF APPLICABLE): Complete the following information for each partner, including all limited partners. If the applicant is a limited partnership, it shall furnish a copy of its certificate of limited partnership. If one of the partners is a corporation, complete the Corporation section above. For more space use a blank sheet to answer each question.

NAME			ALIAS/MAIDEN NAME		
RESIDENTIAL ADDRESS			ZIP		
LENGTH OF RESIDENCY:	KANSAS		SEDGWICK COUNTY		
HOME PHONE		DATE OF BIRTH		RACE	GENDER

**MANAGER INFORMATION** (if different from the applicant)

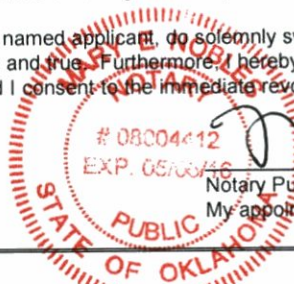
NAME	Blake Cody		ALIAS/MAIDEN NAME		
RESIDENTIAL ADDRESS	8526 Creed Street Wichita, KS		ZIP	67210	
LENGTH OF RESIDENCY:	KANSAS	23 years	SEDGWICK COUNTY	23 years	
HOME PHONE	316 644-3815	DATE OF BIRTH	3-25-92	RACE	C GENDER M

**ALL PERSONS LISTED ON THIS APPLICATION OR ON SUBSEQUENT ATTACHMENTS MUST ANSWER THE FOLLOWING QUESTION:**

Within five years prior to the date of submitting this application, have any of the persons listed above or on subsequent pages been adjudged guilty, placed on diversion, pled nolo contendere to felony or any crime involving moral turpitude? YES ☒ NO

I, Robert Floyd, the above named applicant, do solemnly swear that I have read the contents of this application and that all information and answers herein contained are complete and true. Furthermore, I hereby agree to comply with all laws of the State of Kansas, and all rules and regulations prescribed by the City of Wichita and I consent to the immediate revocation of my license, by the proper officials, for any violation of such laws, rules or regulations.

Signature of Applicant



Notary Public  
My appointment expires on the 2 day of 12, 2016

**FOR OFFICIAL USE ONLY**

LICENSE #	28299	DATE	
TOTAL FEE	100.00	EXPIRATION DATE	

**PRELIMINARY ESTIMATES  
FOR CITY COUNCIL OCTOBER 18, 2016**

- a. Meridian Avenue Paving from 29th Street to existing pavement adjacent to West Valley Park Valley Park Addition, Pierpoint Acres Addition, Unplatted Tract (north of 29th Street, west of Amidon) (472-85239/766345/636433/490367/776068) Traffic to be maintained during construction using flagpersons and barricades. (District VI) - \$194,000.00
- b. Stout from the north line of Hunters View to Stout Circle; Autumn Ridge from Stout Circle to the east line of the Addition; Stout Circle from the west line of Stout to and including the cul-de-sac to serve Cheryl's Hollow 2nd Addition (north of 13th Street North, west of 135th Street West) (472-84412/766365/490388) Does not affect existing traffic. (District V) - \$284,000.00
- c. Water Distribution System to serve Southern Ridge 3rd Addition (south of Pawnee, west of Maize) (448-90056/735559/470232) Does not affect existing traffic. (District IV) - \$82,000.00

**PRELIMINARY ESTIMATE of the cost of:**

Meridian Avenue Paving from 29th Street to existing pavement adjacent  
to West Valley Park  
Valley Park Addition, Pierpoint Acres Addition, Unplatted Tract

All work done and all materials furnished to be in accordance with plans and specifications  
on file in the office of the City Engineer.

**LUMP SUM BID ITEMS (766345)**

1	Site Clearing	1	LS
2	Site Restoration	1	LS
3	Removal of Existing Structures	1	LS
4	Sodding	1	LS
5	Signing	1	LS
6	Traffic Control	1	LS

**MEASURED QUANTITY BID ITEMS (766345)**

7	Excavation	962	cy
8	Fill, Loose	36	cy
9	Pavement Removal	487	sy
10	Sawcut	229	lf
11	Concrete Pavement (VG) 7" (Reinf)	173	sy
12	Concrete Driveway 8" (Reinf)	682	sf
13	Concrete Driveway 6"	487	sf
14	AC Pavement 5" (3" Bit Base)	1,285	sy
15	Crushed Rock Base 5", Reinforced	1,700	sy
16	Concrete C & G, Type 4 (6-5/8" & 1-1/2")	514	lf
17	Concrete Curb, Mono Edge (6-5/8" & 1-1/2")	97	lf
18	Concrete Sidewalk 4"	206	sf
19	Wheelchair Ramp w/Detectable Warnings	4	ea
20	Rip-Rap, Light Stone	8	sy
23	Pipe, SWS 15"	136	lf
24	Pipe, End Section 15"	2	ea
25	MH, Doghouse SWS (5')	3	ea
26	Inlet, Curb (Type 1) (L=5' W=3')	4	ea
27	Inlet, Curb (Type 2) (L=3' 8" W=3' 4-3/8")	2	ea
28	Inlet Hookup	6	ea
29	Inlet Underdrain	120	lf
30	BMP, Curb Inlet Protection	6	ea
31	BMP, Silt Fence	803	lf
32	BMP, Back of Curb Protection	834	sy

**MEASURED QUANTITY BID ITEMS (636433)**

33	Fire Hydrant Removal	1	ea
34	Fire Hydrant Assembly	1	ea
35	Pipe, WL 8"	50	lf
36	Water Meter Adjusted	2	ea
37	Valve Box Adjusted	2	ea

**Construction Subtotal**

Design Fee  
Engineering & Inspection (766345)  
Engineering & Inspection (636433)  
Administration  
Publication

**Total Estimated Cost****\$194,000.00**

CITY OF WICHITA)  
STATE OF KANSAS) SS

I do solemnly swear that the above amount is correct, reasonable and just.

  
Gary Janzen, P.E., City Engineer

Sworn to and subscribed before me this \_\_\_\_\_  
(DATE)

\_\_\_\_\_  
City Clerk

490367/776068 (766345/636433) 472-85239

Page \_\_\_\_\_

EXHIBIT \_\_\_\_\_

**PRELIMINARY ESTIMATE of the cost of:**

Stout from the north line of Hunters View to Stout Circle; Autumn Ridge from Stout Circle to the east line of the Addition; Stout Circle from the west line of Stout to and including the cul-de-sac to serve Cheryl's Hollow 2nd Addition (north of 13th Street North, west of 135th Street West)

All work done and all materials furnished to be in accordance with plans and specifications on file in the office of the City Engineer.

**LUMP SUM BID ITEMS**

1	Excavation	2,410	cy
2	Fill, Compacted (95% Density)	559	cy
3	Signing	1	LS
4	Seeding	1	LS
5	Site Clearing	1	LS
6	Site Restoration	1	LS

**MEASURED QUANTITY BID ITEMS**

7	AC Pavement 5" (3" Bit Base)	3,506	sy
8	Crushed Rock Base, 5" Reinforced	4,040	sy
9	Concrete Pavement (VG) 7" (Reinf)	239	sy
10	Concrete C & G, Type 2 (3-5/8" RL & 1-1/2")	1,909	lf
11	Concrete Sidewalk, 4"	3,136	sf
12	Wheelchair Ramps	5	ea
13	Pipe, SWS 18" RCP	794	lf
14	Pipe, SWS 42" RCP	36	lf
15	Inlet, Curb (Type 1A) (L=5' W=3')	2	ea
16	Inlet, Curb (Type 1A) (L=10' W=5')	2	ea
17	Inlet, Backyard	3	ea
18	Inlet Hookups	4	ea
19	Inlet Underdrain	70	lf
20	Rip-Rap, Light Stone	84	sy
21	Fill, Sand (Flushed & Vibrated)	76	lf
22	BMP, Construction Entrance	1	ea
23	BMP, Curb Inlet Protection	4	ea
24	BMP, Drop Inlet Protection	3	ea
25	BMP, Erosion Control Mat	1,904	sy

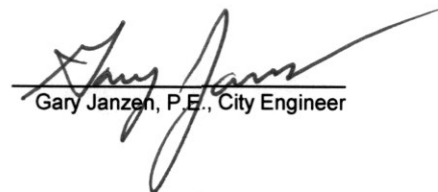
**Construction Subtotal**

Design Fee  
Engineering & Inspection  
Administration  
Publication  
Contingency

**Total Estimated Cost****\$284,000.00**

CITY OF WICHITA)  
STATE OF KANSAS) SS

I do solemnly swear that the above amount is correct, reasonable and just.

  
Gary Janzen, P.E., City Engineer

Sworn to and subscribed before me this \_\_\_\_\_  
(DATE)

\_\_\_\_\_  
City Clerk

490388 (766365) 472-84412

Page \_\_\_\_\_

EXHIBIT \_\_\_\_\_

To be Bid: October 7, 2016

**PRELIMINARY ESTIMATE of the cost of:**Water Distribution System to serve Southern Ridge 3rd Addition  
(south of Pawnee, west of Maize)All work done and all materials furnished to be in accordance with plans and specifications  
on file in the office of the City Engineer.**LUMP SUM BID ITEMS**

1	Seeding	1	LS
2	Site Clearing	1	LS
3	Site Restoration	1	LS

**MEASURED QUANTITY BID ITEMS**

4	Pipe, WL 6"	278	lf
5	Pipe, WL 8"	1,365	lf
6	Pipe, WL 8", DICL	15	lf
7	Fire Hydrant Assembly	3	ea
8	Valve Assembly, 8"	2	ea
9	Valve Assembly, Blowoff, 2"	2	ea
10	Valve Assembly, Anchored 8", Special	1	ea
11	Concrete Encasement 8", Reinforced	20	lf
12	BMP, Construction Entrance	1	ea
13	BMP, Drop Inlet Protection	6	ea
14	BMP, Erosion Control Berm	875	lf

**Construction Subtotal**Design Fee  
Engineering & Inspection  
Administration  
Publication  
Contingency**Total Estimated Cost**\$82,000.00CITY OF WICHITA)  
STATE OF KANSAS) SS

I do solemnly swear that the above amount is correct, reasonable and just.

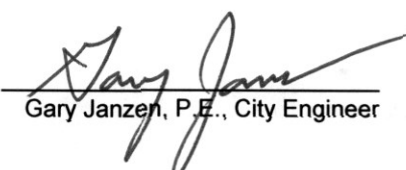
  
\_\_\_\_\_  
Gary Janzen, P.E., City EngineerSworn to and subscribed before me this \_\_\_\_\_  
(DATE)\_\_\_\_\_  
City Clerk470232 (735559) 448-90056  
Page \_\_\_\_\_

EXHIBIT \_\_\_\_\_



City of Wichita  
City Council Meeting  
October 18, 2016

**TO:** Mayor and City Council

**SUBJECT:** Community Events – Mustache Dash 5K (Districts I and VI)

**INITIATED BY:** Division of Arts & Cultural Services

**AGENDA:** Consent

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**Recommendation:** Approve the request for temporary street closures.

**Background:** In accordance with the Community Events procedure, event promoter John Muir, Wichita Running Company, is coordinating the Mustache Dash 5K event with City of Wichita staff, subject to final approval by the City Council.

**Analysis:** The following street closure request has been submitted:

**Mustache Dash 5K November 12, 2016 7:30 am – 10:00 am**

- North Mosley Street, East Douglas Avenue to East 1<sup>st</sup> Street North
- East 1<sup>st</sup> Street North, North Mosley Street to North McLean Boulevard
- North Greenway, West Central Avenue to North Waco Avenue
- North Waco Avenue, West 2<sup>nd</sup> Street North to West 1<sup>st</sup> Street North

The event promoter will arrange to remove the barricades as necessary to allow emergency vehicle access during the entire designated time period. The barricades will be removed immediately upon completion of the event.

**Financial Consideration:** The event promoter is responsible for all costs associated with the special event.

**Legal Consideration:** This action complies with the ordinance on street closures for community events.

**Recommendation/Actions:** It is recommended that the City Council approve the request subject to: 1) Hiring off-duty certified law enforcement officers as required; 2) Obtaining barricades to close the streets in accordance with requirements of the Police, Fire and Public Works and Utilities Departments; and 3) Securing a Certificate of Liability Insurance on file with the Community Event Coordinator.

City of Wichita  
City Council Meeting  
October 18, 2016

**TO:** Mayor and City Council

**SUBJECT:** Community Events – Girls on the Run Fall 5K (Districts III and IV)

**INITIATED BY:** Division of Arts & Cultural Services

**AGENDA:** Consent

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**Recommendation:** Approve the request for temporary street closure.

**Background:** In accordance with the Community Events procedure, event promoter Carolyn Robinson, Timer Guys, is coordinating the Girls on the Run Fall 5K with City of Wichita staff, subject to final approval by the City Council.

**Analysis:** The following street closure request has been submitted:

**Girls on the Run Fall 5K November 13, 2016 12:30 pm – 3:30 pm**

- South McLean Boulevard, West 30<sup>th</sup> Street South to West Harry Street

The event promoter will arrange to remove the barricades as necessary to allow emergency vehicle access during the entire designated time period. The barricades will be removed immediately upon completion of the event.

**Financial Consideration:** The event promoter is responsible for all costs associated with the special event.

**Legal Consideration:** This action complies with the ordinance on street closures for community events.

**Recommendation/Actions:** It is recommended that the City Council approve the request subject to: 1) Hiring off-duty certified law enforcement officers as required; 2) Obtaining barricades to close the streets in accordance with requirements of the Police, Fire and Public Works and Utilities Departments; and 3) Securing a Certificate of Liability Insurance on file with the Community Events Coordinator.

City of Wichita  
City Council Meeting  
October 18, 2016

**TO:** Mayor and City Council

**SUBJECT:** Community Events – Hawaii 5.0K (District II)

**INITIATED BY:** Division of Arts & Cultural Services

**AGENDA:** Consent

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**Recommendation:** Approve the request for temporary street closures.

**Background:** In accordance with the Community Events procedure, event promoter Trevor Darmstetter, Dragon Masters Foundation and Timer Guys, is coordinating the Hawaii 5.0K event with City of Wichita staff, subject to final approval by the City Council.

**Analysis:** The following street closure request has been submitted:

**Hawaii 5.0K November 5, 2016 3:00 pm – 7:00 pm**

- East Thorn Drive, North Rock Road to North Comotara Street
- North Comotara Street, East Thorn Drive to East 35<sup>th</sup> Street North
- East 35<sup>th</sup> Street North, North Comotara Street to North Webb Road
- North Webb Road, East 35<sup>th</sup> Street North to East 40<sup>th</sup> Street North
- East 40<sup>th</sup> Street North, North Webb Road to North Toben Street
- North Toben Street, East 40<sup>th</sup> Street North to East 37<sup>th</sup> Street North
- East 37<sup>th</sup> Street North, North Toben Street to North Comotara Street

The event promoter will arrange to remove the barricades as necessary to allow emergency vehicle access during the entire designated time period. The barricades will be removed immediately upon completion of the event.

**Financial Consideration:** The event promoter is responsible for all costs associated with the special event.

**Legal Consideration:** This action complies with the ordinance on street closures for community events.

**Recommendation/Actions:** It is recommended that the City Council approve the request subject to: 1) Hiring off-duty certified law enforcement officers as required; 2) Obtaining barricades to close the streets in accordance with requirements of the Police, Fire and Public Works and Utilities Departments; and 3) Securing a Certificate of Liability Insurance on file with the Community Event Coordinator.



City of Wichita  
City Council Meeting  
October 18, 2016

**TO:** Mayor and City Council

**SUBJECT:** Community Events – Haute Handmade Pop Up Market (District VI)

**INITIATED BY:** Division of Arts & Cultural Services

**AGENDA:** Consent

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**Recommendation:** Approve the request for temporary street closure.

**Background:** In accordance with the Community Events procedure, event promoter Liv Grant, is coordinating the Haute Handmade Pop Up Market with City of Wichita staff, subject to final approval by the City Council.

**Analysis:** The following street closure request has been submitted:

**Haute Handmade Pop Up Market October 23, 2016 11:00 am – 5:00 pm**

- 20 Foot Wide Platted Alley, Between Lots 4 and 6, Off Mead Street and Rock Island

The event promoter will arrange to remove the barricades as necessary to allow emergency vehicle access during the entire designated time period. The barricades will be removed immediately upon completion of the event.

**Financial Consideration:** The event promoter is responsible for all costs associated with the special event.

**Legal Consideration:** This action complies with the ordinance on street closures for community events.

**Recommendation/Actions:** It is recommended that the City Council approve the request subject to: 1) Hiring off-duty certified law enforcement officers as required; 2) Obtaining barricades to close the streets in accordance with requirements of the Police, Fire and Public Works and Utilities Departments; and 3) Securing a Certificate of Liability Insurance on file with the Community Events Coordinator.

City of Wichita  
City Council Meeting  
October 18, 2016

**TO:** Mayor and City Council

**SUBJECT:** Community Events – Kansas Children’s Literacy Festival (District I)

**INITIATED BY:** Division of Arts & Cultural Services

**AGENDA:** Consent

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**Recommendation:** Approve the request for temporary street closures.

**Background:** In accordance with the Community Events procedure, the event promoter Barbara Chamberlin, Story Time Village, is coordinating the Kansas Children’s Literacy Festival with City of Wichita staff, subject to final approval by the City Council.

**Analysis:** The following street closure request has been submitted:

**Kansas Children’s Literacy Festival October 22, 2016 8:00 am – 9:00 pm**

- North Opportunity Drive, 21<sup>st</sup> Street North to the end of North Opportunity Drive

The event promoter will arrange to remove the barricades as necessary to allow emergency vehicle access during the entire designated time period. The barricades will be removed immediately upon completion of the event.

**Financial Consideration:** The event promoter is responsible for all costs associated with the special events.

**Legal Consideration:** This action complies with the ordinance on street closures for community events.

**Recommendation/Actions:** It is recommended that the City Council approve the request subject to: 1) Hiring off-duty certified law enforcement officers as required; 2) Obtaining barricades to close the streets in accordance with requirements of the Police, Fire and Public Works and Utilities Departments; and 3) Securing a Certificate of Liability Insurance on file with the Community Event Coordinator.

City of Wichita  
City Council Meeting  
October 18, 2016

**TO:** Mayor and City Council

**SUBJECT:** Approval of the Great Plains Nature Center Memorandum of Agreement between the U.S. Fish and Wildlife Service, the Kansas Department of Wildlife, Parks and Tourism and the City of Wichita (District I)

**INITIATED BY:** Department of Park & Recreation

**AGENDA:** Consent

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**Recommendation:** Approve the Memorandum of Agreement.

**Background:** The Great Plains Nature Center is located at 6232 E. 29th St. North. The U.S. Fish and Wildlife Service (Service), The Kansas Department of Wildlife, Parks and Tourism (State) and the City of Wichita (City) have compatible goals in providing interpretive and environmental education opportunities to the public. All three agencies have combined services to provide excellent opportunities for the public to develop an appreciation for wildlife, the environment and a sound stewardship of natural resources. There was an addendum to the agreement on October 14, 2014 that includes the Friends of Great Plains Nature Center as a forth partner, whose purpose is to support the development and operation of the Great Plains Nature Center.

**Analysis:** This Memorandum of Agreement (MOA) is intended to supersede the prior MOA between the Service, State, and the City executed by the City on June 20, 2006. This MOA is slated to expire on December 31, 2016. The Service provided contractual oversight of the exhibit and interpretive display construction. The Service will continue to provide full-time staff on-site for interpretation and education. The State funded construction of the exhibits, furnishings and interpretive displays and will continue to provide annual building maintenance and operation for all three agencies, and a building manager and staff in-place for interpretation and education. The City provided access and exterior facility development and will continue to provide annual maintenance not related to the building to integrate the Center with Chisholm Creek Park. The Friends will continue to provide support operations at the Center per the addendum to the agreement.

**Financial Considerations:** The City will continue to provide for the annual landscape operating and maintenance of the site, the adjacent park at an average annual cost of \$18,512 and pay the Friends of Great Plains Nature Center \$112,000 per year to employ and support staff at the Center, or for other purposes consistent with the educational mission of the Center. This amount will increase by 2% per year for the term of the MOA. The City will also directly compensate and supervise one full-time City employee working at the Center for the estimated amount of \$101,521. These costs are included in the 2017 and 2018 Adopted Budgets for the General Fund.

**Legal Considerations:** The Law Department has approved the Memorandum of Agreement as to form.

**Recommendation/Actions:** It is recommended that the City Council approve the Memorandum of Agreement and authorize the appropriate signatures.

**Attachment:** Memorandum of Agreement.

## MEMORANDUM OF AGREEMENT

Between the

U.S. FISH & WILDLIFE SERVICE

and

KANSAS DEPARTMENT OF WILDLIFE PARKS AND TOURISM

and

WICHITA DEPARTMENT OF PARK AND RECREATION

and

FRIENDS OF GREAT PLAINS NATURE CENTER, Inc.

### I. PURPOSE

THIS AGREEMENT between the Department of the Interior, U.S. Fish & Wildlife Service, Region 6, Denver, Colorado, hereinafter referred to as the Service; the State of Kansas, by and through the Kansas Department of Wildlife, Parks and Tourism, hereinafter referred to as the State; the Wichita Department of Park and Recreation, hereinafter referred to as the City; and Friends of Great Plains Nature Center, hereinafter referred to as the Friends; is made and entered into as a joint venture for the purpose of operating the Great Plains Nature Center in Wichita, Kansas, hereinafter referred to as the Center. This Memorandum of Agreement is intended to supersede the prior Memorandum of Agreement between the Service, City, and State, executed by such entities on May 5, 1996, October 15, 1996, October 21, 1996 and May 3, 2006, respectively, and the Addendum executed by such entities on October 14, 2014.

### II. AUTHORITY

This agreement is entered into under the authority of the:

- A. Fish and Wildlife Act of 1956, as amended (16 U.S.C. a – 742k).
- B. Fish and Wildlife Coordination Act of 1934, as amended (16 U.S.C. 661-666).
- C. Refuge Recreation Act (U.S.C. paragraph 460 K. et seq), as amended.
- D. National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd – 668ee), as amended.

### III.

#### BACKGROUND

The Service, State, City, and Friends (collectively the parties) have compatible goals in providing interpretive and environmental education opportunities to the public. All three agencies, along with the Friends, have combined resources to provide excellent opportunities for the public to investigate, understand, and develop an appreciation for wildlife, the environment, and a sound stewardship of natural resources.

The Center provides a focal point and source for the agencies/organization to cooperatively provide interpretation and environmental education to achieve the following common goals:

- Provide opportunities to the public to learn about natural resources, especially the wildlife and plant species, of the Great Plains Region. Emphasis will be on the Great Plains ecosystem.
- Provide visitors with enjoyable educational experiences that impart the importance of wise stewardship of natural resources and the roles and responsibilities of the Service, State, City, and Friends.
- Serve as community resource for conservation and related informational materials, with emphasis on the importance of urban habitats to wildlife and people.
- Serve as a resource for environmental education with school districts, youth organizations, colleges and universities, conservation organizations, and other groups and individuals interested in wildlife and the environment.
- Provide environmental educational services for and accommodate those groups and individuals with disabilities

The potential for informing people about wildlife and environmental concerns is unlimited at the Center. On-site staff will be available for guided tours and learning seminars to groups, schools, youth organizations, etc. Walk-in visitors will be accommodated through exhibits, interpretive displays, printed materials, self-guided interpretive walking trails, audio-visual programs, and on-site demonstrations and presentations.

The Center functions as a Service administrative site and an educational facility. It is not a unit of the National Wildlife Refuge System.

The Center is located on 7 acres adjacent to the 238-acre Chisholm Creek Park, a Wichita Wild Habitat Area located north of 29<sup>th</sup> Street North between Oliver and Woodlawn in the City of Wichita.

#### IV. SCOPE OF THE AGREEMENT

##### A. General

The Service acquired approximately 7 acres of land, and designed and constructed a building sufficient to house exhibits and staff for all three agencies. The Service designed all the exhibits and interpretive displays to support each party's mission and goals. The Service provided contractual oversight of the exhibit and interpretive display construction. The Service will continue to provide full-time staff on-site for interpretation and education.

The State funded construction of the exhibits and interpretive displays, has provided furnishings and will continue to provide annual building maintenance and operation for all three agencies, and will continue to provide a building manager and staff in-place for interpretation and education. Sufficient office space will continue to be made available for State regional administrative staff.

The City provided access and exterior facility development and will continue to provide the annual maintenance that is not related to the building in order to integrate the Center with Chisholm Creek Park. The City will continue to provide at least one full-time staff member at the Center.

The Friends are designated as a support group for the Service, State, and City, and will continue to assist with the "common goals" of the Center as provided above. The Friends will continue to provide fundraising opportunities through the operation of The Owl's Nest Gift Shop, fundraising events, and soliciting grants.

Upon signing this Agreement, the Service, State, and City agree to the establishment of a "Steering Committee" which is to be chaired by an agency representative appointed by the Steering Committee. Each agency will have one member. The terms of Project Officer and Steering Committee Member are used interchangeably.

Office and associated space allocation within the Center will be as follows:

Service – One office; total space approximately 150 square feet.

State – Fourteen offices, one conference room, and storage space; total space approximately 3,386 square feet.

City – One office; total space approximately 150 square feet.

Friends – Three offices; total space approximately 450 square feet.

All other office space, including the extra offices, classrooms, break room, rest rooms, lobby, auditorium, exhibit space, and other areas, are space shared by all parties. Appropriate use of these spaces will be determined by the Steering Committee.

B. The Parties Agree As Follows:

The Center will be operated and managed as a Service administrative site and an Urban Wildlife Refuge Partnership site and will not become a unit of the National Wildlife Refuge System.

The operation of the Center will be jointly accomplished to satisfy the objectives of each party.

Agency fiscal requirements and responsibilities will be dependent on Congressional, State, and/or City appropriations.

The interpretive and educational operation of the Center will be coordinated by a Director appointed by the Steering Committee and will function under the direction of the Steering Committee via issuance of an approved Annual Work Plan.

The Director will be responsible for developing and submitting an Annual Work Plan no later than March 1 each year to the Steering Committee for review and approval. The operation of the Center will continue consistent with the last approved Annual Work Plan, pending approval of a revised, submitted Annual Work Plan. The Director will also be responsible for submitting to the Steering Committee a summary report of the Center's operations at least once every three months.

The Center will provide visitors with facilities and functions to meet the goals described in Section III of this document.

The Friends of the Great Plains Nature Center was incorporated on May 4, 1998, as a non-profit 501 (c)(3) organization. The purpose of the Friends is to support the development and operation of the Center, and support the mission of the Service, State, and City. No

activity of the Friends shall be in conflict with the policies or mission of the Center or the Service, State, or City.

Friends support of the Center and the agencies will continue to include the following:

- To increase awareness of the Center and its contribution to the community.
- To sustain the programs of the Center, including education, publications, and special events.
- To recruit volunteers and raise funds (through annual dues, annual fundraising events, grants and other contributions) in order to support the organization and educational programs of the Center.
- To maintain, for a minimum of three years following final payment, all records related to its performance as recipient of funds from the City. The Friends shall provide access to authorized City representatives, including the City Auditor, at reasonable times and in a reasonable manner to inspect and copy any such records.
- To establish and maintain a system of internal accounting control which complies with all applicable, generally accepted accounting principles and non-profit accounting and financial reporting standards.

C. The Service Has Agreed and Continues to Agree to:

Pay annual refuge revenue sharing payments through the Refuge Revenue Sharing Fund to Sedgwick County in accordance with the Refuge Revenue Sharing Act, as amended (PL 95-469).

Provide major capital replacement for materials and equipment which qualify as projects under the Service's deferred maintenance system. These projects will address major maintenance, facility rehabilitation, and major capital repair to the Center.

Provide at least one full-time employee to support the Center's environmental education staff, or to serve in a capacity as determined by the Service or the Steering Committee.

Provide access to lands to construct additional facilities as needed with appropriate approval and with appropriate NEPA and other documentation.

D. The State Has Agreed and Continues to Agree to:



Provide, in cooperation and consultation with the Service and City, interior décor, furnishings, supplies, equipment, and other materials necessary for the Center to be functional.

Provide at least one full-time employee as part of the Center's environmental education staff who shall also be responsible for coordinating building operations and maintenance.

Provide an additional full-time employee, or equivalent part-time positions, to support the Center's environmental education staff.

Provide annual operating and maintenance for the Center (e.g., pay utilities, repaint interior, replace carpeting, etc.).

Provide Internet Service. However the State reserves the right to re-examine the charges for Internet Service throughout the term of this Agreement, and may opt to have all parties pay for their own Internet Service.

E. The City Has Agreed and Continues to Agree to:

Maintain utilities to the site of the Center including water, sanitary sewer, electricity, telephone, and natural gas.

Provide for the annual landscape maintenance of the site and the adjacent park, including mowing and trimming of the Center campus, parking lot area and along the paved nature trails.

Provide for maintenance of physical infrastructure such as fencing, exterior signage, area lighting, remote restrooms and sidewalks.

Maintain public access to the Center, including snow removal along sidewalks, parking lots, and roadways, plus necessary maintenance of access routes.

Maintain lighted, paved parking adjacent to the Center for cars and buses.

Pay the Friends a cash sum to employ and support staff at the Center, or for other purposes consistent with the educational mission of the Center. This amount will be ONE HUNDRED TWELVE THOUSAND DOLLARS and 00/100 (\$112,000) per year initially and will increase by 2% per year for the term of the MOA. The Friends shall send quarterly invoices equal to ¼ of the annual total current for that calendar year to the Director of Park and

Recreation, 11th floor, 455 N. Main Street, Wichita, Kansas 67202. The City shall process payment according to its routine accounting procedures after the billed quarter is completed.

Directly compensate and supervise one full-time City employee working at the Center. That employee's efforts will primarily be allocated to support the educational mission of the Center. That employee will also serve as liaison to the City for coordination of habitat management and program use of Chisholm Creek Park and operation of the Kansas Wildlife Exhibit (KWE) in Central Riverside Park.

Manage Chisholm Creek Park in a manner consistent with the goals and educational mission of the Center, so the facilities and habitats within the park may be used as an outdoor classroom and interpretive area to complement and enhance the environmental education mission of the Center.

Make the animals housed at the KWE available for educational program use by staff at the Center. Center staff will support onsite educational programming at the KWE.

F. FUNDING

The Service originally provided:

Land Acquisition	\$ 160,000
Building Planning and Design	\$ 707,000
Building Construction	\$ 3,450,000
Exhibits and Education Materials	\$ 500,000

The State originally provided:

Internal Furnishings	\$ 218,000
Interpretive Exhibits (Transfer of funds To the Service)	\$ 782,000

The City originally provided:

Landscaping, Parking Facilities, and Public Access	\$ 1,063,740
-------------------------------------------------------	--------------

TOTAL FUNDS EXPENDED (Prior to 2000) \$ 6,880,740

V. PERIOD OF PERFORMANCE

The period of performance of this agreement is from January 1, 2017 to December 31, 2026.

VI. FINANCIAL ADMINISTRATION

Nothing in this agreement shall be construed as committing the City, State or Service to the expenditure of funds except for the annual City funding for the Friends specified in Section IV (E) above.

VII. PROJECT OFFICERS

The Project Officers herein shall be responsible for their agency's compliance with the terms of this agreement. As representatives of the agency and a member of the Steering Committee, they have the authority to approve changes within the scope of the agreement, which will not alter the stated objectives and will not obligate any funds. Each Project Officer will serve as a Steering Committee member. In the case of a resignation or change in Officers for any reason, all project officers will be notified of the change through an amendment to this agreement.

A. Kansas Department of Wildlife, Parks and Tourism  
Mr. Mike Miller, Chief of Information Production Section  
512 S.E. 25<sup>th</sup> Ave.  
Pratt, Kansas 67124  
(620) 672-5911  
FAX (620) 672-6020

B. City of Wichita  
Wichita Department of Park and Recreation  
Mr. Troy Houtman, Director  
City Hall Building  
455 North Main Street  
Wichita, Kansas 67202  
(316) 268-4398  
FAX (316) 268-4447

C. U.S. Fish & Wildlife Service  
Mr. Mike Oldham, Project Leader  
Quivira National Wildlife Refuge  
RR 3, Box 48A  
Stafford, Kansas 67578  
(620) 486-2393  
(620) 486-2315

D. Friends of Great Plains Nature Center  
Mr. Tom Hein, President  
Great Plains Nature Center  
6232 E 29<sup>th</sup> St N

Wichita, KS 67220  
(316) 683-5499

VIII. SPECIAL PROVISIONS

- A. Real Property. Title to all real property shall be vested with the Service. The parties collectively shall have a right of first refusal to acquire the Service's fee simple interest in the real property. If the Service determines to sell, or is directed to sell, or otherwise dispose of the real property, then the parties collectively (or individually upon the failure of the other party to agree to purchase) shall have the right to purchase the real property at the same bona fide purchase price offered to the Service by an independent third party on the same terms and conditions as such offer. Such right of first refusal shall remain in full force and effect through the earlier of December 31, 2026, or the completion of a title transfer from the Service to an independent party, pursuant to an offer of purchase of which the parties have been advised and have failed to match as more fully set forth below. The Service shall advise the parties in writing of any bona fide offers to purchase that the Service is willing to accept, and shall provide the parties a copy of such an offer in its entirety to enable the parties to make a determination whether they collectively, or individually, can make a corresponding offer on the same terms and conditions. The parties shall have one hundred eighty (180) days after receipt of the bona fide offer to advise the Service that they collectively, or individually, are prepared to exercise such right of first refusal.
- B. The State and City shall bear all costs of maintenance and repair of real property provided by the Service under the terms of this agreement except for catastrophic damage (fire, flood, tornado, etc.).
- C. The State and City agree to hold the Service harmless from any liability from fines, claims, damages, losses, judgments, and expenses arising out of or resulting from any act, omission, or activity by the State or City in connection with the activities undertaken in the operation, maintenance, and use of the herein described real property.
- D. The Service, State, City, and Friends agree that renovations, updates and additions to the Center are necessary and will work cooperatively to modernize the facility as funding is available and to secure funding from sources other than annual budgets.

IX. MODIFICATIONS

Modifications to this agreement may be proposed at any time during the period of performance by any of the parties hereto. Modifications shall be issued on a Standard Form 30 and become effective upon signature by an authorized individual of each party. Notwithstanding the provisions of Article VII permitting Project Officers to make and approve certain changes within the scope of the agreement, the authorized individual referenced in this Article IX for the purposes of the State shall be solely the Secretary of the Department of Wildlife, Parks and Tourism.

X. TERMINATION

Any party to this agreement may terminate their participation in this agreement by giving written notice to the other three parties; such notice must be given a minimum of one year in advance, and such termination shall be effective on the first day of July immediately following the lapse of the one year notice period. Termination, or withdrawal, shall not relieve the withdrawing party from any obligations under this agreement, subsequent modification, or the Annual Work Plan, incurred prior to the effective date of the termination. Terminations for cause shall not become effective earlier than one hundred eighty (180) days after the defaulting party's receipt of the Service's written determination and reasons for termination; provided, however, if the defaulting party commences reasonable efforts to cure such noticed default within thirty (30) days after being advised of such default, and diligently pursues such cure without interruption thereafter then the agreement will not be terminated. The default by one party in its compliance with the conditions of the agreement shall not constitute "cause" for termination of the agreement with respect to the non-defaulting parties, provided such non-defaulting parties within a reasonable period after receipt of written notice that the other party has failed to cure such default, cures the default of the other party and assumes the prospective obligations remaining under this agreement. A cure of default by a non-defaulting party shall not be asserted by the defaulting party as a basis not to terminate its interest in the agreement, unless otherwise agreed between the parties. A party which has not timely cured defaults of its obligations, shall be deemed to have forfeited its interest in this agreement, including the right of first refusal to purchase real property. An affidavit by the Project Officer designated by the Service with respect to the default notice given and the lapse of the corresponding cure period, without correction of the noticed default, shall be conclusive proof of the termination of the defaulting recipient's interest in this agreement and its forfeiture of the right of first refusal.

SIGNATURE PAGE

IN WITNESS WHEREOF, the parties hereto have caused this Memorandum of Agreement to be executed as of the date therein written.

Kansas Department of Wildlife, Parks and Tourism:

Signature: \_\_\_\_\_

Name: Robin Jennison

Title: Secretary

Date: \_\_\_\_\_

City of Wichita, Kansas:

Signature: \_\_\_\_\_

Name: Jeff Longwell

Title: Mayor

Date: \_\_\_\_\_

U.S. Fish & Wildlife Service:

Signature: \_\_\_\_\_

Name: Noreen Walsh

Title: Regional Director

Date: \_\_\_\_\_

Friends of Great Plains Nature Center

Signature: \_\_\_\_\_

Name: Tom D. Hein

Title: President

Date: \_\_\_\_\_

City of Wichita  
City Council Meeting  
October 18, 2016

**TO:** Mayor and City Council

**SUBJECT:** Fire Apparatus Replacement (All Districts)

**INITIATED BY:** Department of Public Works & Utilities and Fire Department

**AGENDA:** Consent

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**Recommendation:** Approve the project, adopt the bonding resolution, and authorize the necessary signatures.

**Background:** The 2016-2025 Adopted Capital Improvement Program (CIP) funds replacement of fire apparatus to ensure adequate emergency responses. There are 46 pieces of front-line and reserve fire equipment, which have an average life of 10-15 years. Several of these fire apparatus must be replaced each year to maintain fire protection capabilities. The CIP budget is committed solely to replacement of the heavy apparatus and associated equipment that is required for fire and rescue operations.

**Analysis:** Staff from Public Works & Utilities engaged with Wichita Fire Department personnel about fire apparatus replacement needs. The most immediate need is the replacement of a command truck that was purchased in 1993. This piece of equipment is critical to command and control of emergency operations. Improved communications technology would be built into the new command truck to ensure reliability of communications between command staff and response personnel operating on-site during emergencies.

There are other aging fire apparatus in need of replacement. It is expected that at least one truck (aerial platform) and two engines (pumpers) will be purchased along with the command truck. Other apparatus may be replaced depending on individual asset conditions, available budget, and operating needs of the Wichita Fire Department. Equipment needed to outfit the vehicles will also need to be purchased. This equipment includes fire hoses, rescue tools, emergency radios, and other specialized fire suppression tools and equipment.

City staff, in consultation with the Public Policy and Management Center at Wichita State University, developed a predictive analytics model to support fleet replacement decisions. This fleet model was presented to the City Council in the workshop on August 23, 2016. It resulted in an optimized approach to replacing fleet assets in a way that maintains current service levels while minimizing lifecycle costs. The fleet model results in a replacement interval of 14 years for fire apparatus. There are eight fire apparatus that will reach 14 years of age by the time the next set of units are delivered. The expected replacement value on those assets is approximately \$8.4 million. The CIP includes funding in future years – including in 2017 – to enable additional replacements.

**Financial Considerations:** The recommended action would initiate the \$6,953,000 budgeted in 2016 for fire apparatus and related equipment replacement in the 2016-2025 Adopted CIP.

**Legal Considerations:** The Law Department has reviewed and approved the bonding resolution as to form.

**Recommendations/Actions:** It is recommended that the City Council approve the project, adopt the bonding resolution, and authorize the necessary signatures.

**Attachments:** Bonding resolution and budget sheet.

# Project Request

☒ CIP ☐ Non-CIP

CIP YEAR:

2016

CIP #: 2016-2025 CIP

☐ NEIGHBORHOOD IMPROVEMENT

DEPARTMENT: 13 Public Works & Utilities

DIVISION: Fleet & Bldings

RESOLUTION/ORDINANCE #:

ENGINEERING REFERENCE #:

FUND: 435 Public Improvements

COUNCIL DISTRICT: 07 All Districts

DATE COUNCIL APPROVED:

REQUEST DATE: Oct 18, 2016

PROJECT #: 435499

PROJECT TITLE: 2016 Fire Apparatus

PROJECT DETAIL #: 01

PROJECT DETAIL DESCRIPTION:

OCA #: 795022

OCA TITLE: 2016 Fire Apparatus

PERSON COMPLETING FORM: Megan McCall

PHONE #: 268-4093

PROJECT MANAGER: Ben Nelson

PHONE #: 268-4356

☒ NEW BUDGET ☐ REVISED BUDGET

## REVENUE

## EXPENSE

Object Level 3	Budget	Object Level 3	Budget
9720 G.O. Bonds	\$6,953,000.00	4503 Fire Trucks =>\$10,000	\$6,953,000.00
	\$0.00		\$0.00
	\$0.00		\$0.00
	\$0.00		\$0.00
	\$0.00		\$0.00
	\$0.00		\$0.00
	\$0.00		\$0.00

REVENUE TOTAL: \$6,953,000.00

EXPENSE TOTAL: \$6,953,000.00

NOTES:

## SIGNATURES REQUIRED

DIVISION HEAD:

DEPARTMENT HEAD:

BUDGET OFFICER:

CITY MANAGER:

Print Form

DATE:

DATE:

DATE:

DATE:



**RESOLUTION NO.**

**A RESOLUTION AUTHORIZING THE ISSUANCE OF GENERAL OBLIGATION BONDS OF THE CITY OF WICHITA, KANSAS TO PAY THE COSTS OF CERTAIN PUBLIC IMPROVEMENTS IN THE CITY.**

---

**WHEREAS**, the City of Wichita, Kansas (the "City") is a municipal corporation, duly created, organized and existing under the Constitution and laws of the State; and

**WHEREAS**, the Governing Body is authorized, pursuant to K.S.A. 13-1024c, as amended by Charter Ordinance No. 156 of the City (the "Act") to issue general obligation bonds of the City without an election for the purpose of paying for the construction, purchase or improvement of any public improvement, including the land necessary therefore, and for the purpose of rebuilding, adding to or extending the same as the necessities of the City may require and for the purpose of paying for certain personal property therefore; and

**WHEREAS**, the Governing Body hereby finds and determines that it is necessary and advisable to make certain public improvements described as follows:

**2016 Fire Apparatus, including Trucks, supplies and equipment needed to outfit them for service.**

(collectively, the "Project") and to provide for the payment of all or a portion of the costs thereof by the issuance of general obligation bonds of the City pursuant to the Act.

**BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, AS FOLLOWS:**

**Section 1. Project Authorization.** It is hereby authorized, ordered and directed that the Project be acquired and/or constructed at an estimated cost of \$6,953,000 in accordance with plans and specifications therefor prepared under the direction of the Fleet & Facilities Superintendent and approved by the Governing Body; said plans and specifications to be placed on file in the office of the Fleet & Facilities Superintendent.

**Section 2. Project Financing.** All or a portion of the costs of the Project, interest on financing and administrative and financing costs shall be financed with the proceeds of general obligation bonds of the City (the "Bonds"). The Bonds may be issued to reimburse expenditures made on or after the date which is 60 days before the date of adoption of this Resolution, pursuant to Treasury Regulation §1.150-2.

**Section 3. Effective Date.** This Resolution shall be in full force and effect from and after its adoption by the Governing Body.

**ADOPTED** by the City Council of the City of Wichita, Kansas, on October 18, 2016.

(SEAL)

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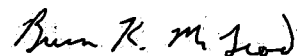
Jeff Longwell, Mayor

ATTEST:

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Karen Sublett, City Clerk

APPROVED AS TO FORM:

  
for Jennifer Magana, Director of Law

## RESOLUTION NO. 16-410

### **A RESOLUTION AUTHORIZING THE ISSUANCE OF GENERAL OBLIGATION BONDS OF THE CITY OF WICHITA, KANSAS TO PAY THE COSTS OF CERTAIN PUBLIC IMPROVEMENTS IN THE CITY.**

---

**WHEREAS**, the City of Wichita, Kansas (the “City”) is a municipal corporation, duly created, organized and existing under the Constitution and laws of the State; and

**WHEREAS**, the Governing Body is authorized, pursuant to K.S.A. 13-1024c, as amended by Charter Ordinance No. 156 of the City (the “Act”) to issue general obligation bonds of the City without an election for the purpose of paying for the construction, purchase or improvement of any public improvement, including the land necessary therefore, and for the purpose of rebuilding, adding to or extending the same as the necessities of the City may require and for the purpose of paying for certain personal property therefore; and

**WHEREAS**, the Governing Body hereby finds and determines that it is necessary and advisable to make certain public improvements described as follows:

**2016 Fire Apparatus, including Trucks, supplies and equipment needed to outfit them for service.**

(collectively, the “Project”) and to provide for the payment of all or a portion of the costs thereof by the issuance of general obligation bonds of the City pursuant to the Act.

**BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, AS FOLLOWS:**

**Section 1. Project Authorization.** It is hereby authorized, ordered and directed that the Project be acquired and/or constructed at an estimated cost of \$6,953,000 in accordance with plans and specifications therefor prepared under the direction of the Fleet & Facilities Superintendent and approved by the Governing Body; said plans and specifications to be placed on file in the office of the Fleet & Facilities Superintendent.

**Section 2. Project Financing.** All or a portion of the costs of the Project, interest on financing and administrative and financing costs shall be financed with the proceeds of general obligation bonds of the City (the “Bonds”). The Bonds may be issued to reimburse expenditures made on or after the date which is 60 days before the date of adoption of this Resolution, pursuant to Treasury Regulation §1.150-2.

**Section 3. Effective Date.** This Resolution shall be in full force and effect from and after its adoption by the Governing Body.

**ADOPTED** by the City Council of the City of Wichita, Kansas, on October 18, 2016.

(SEAL)

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Jeff Longwell, Mayor

ATTEST:

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Karen Sublett, City Clerk

APPROVED AS TO FORM:

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Jennifer Magana, Director of Law

**Agenda Item No. II-9**

**City of Wichita  
City Council Meeting  
October 18, 2016**

**TO:** Mayor and City Council  
**SUBJECT:** Payment for Settlement of Claim  
**INITIATED BY:** Law Department  
**AGENDA:** Consent

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**Recommendation:** Authorize payment of \$40,000 as full settlement of the lawsuit and adopt the bonding Resolution.

**Background:** This lawsuit arises from a near collision involving a City transit van which occurred on January 22, 2014.

**Analysis:** The Claimant/Plaintiff agreed to accept a lump sum payment in the amount of \$40,000 as full settlement of all claims against the City of Wichita. Due to the uncertainty and risk of an adverse judgment at trial, the Law Department recommends the settlement. The settlement of this claim does not constitute an admission of liability on the part of the City; rather, it is merely a settlement to resolve a disputed claim.

**Financial Considerations:** Funding for this settlement payment is available from the City's Self-Insurance Fund. Finance is directed to make any budget adjustments required and to issue any general obligation bonds, as necessary, to provide for payment of the approved settlement.

**Legal Considerations:** The Law Department recommends settlement of this claim for the amount of \$40,000. The bonding Resolution has been prepared and approved as to form by the Law Department.

**Recommendations/Actions:** It is recommended that the City Council authorize payment of \$40,000 as full settlement of all possible claims arising out of the events which are the subject of this lawsuit and adopt the bonding Resolution.

**Attachment:** Resolution.

## **RESOLUTION NO. 16-411**

### **A RESOLUTION AUTHORIZING THE ISSUANCE OF GENERAL OBLIGATION BONDS OF THE CITY OF WICHITA, KANSAS TO FUND A CIVIL LITIGATION SETTLEMENT.**

**WHEREAS**, K.S.A. 75-6113 (the "Act") provides that payment of any judgments, compromises or settlements for which a municipality is liable pursuant to K.S.A. 75-6101 *et seq.*, and amendments thereto, may be made from any funds or moneys of the municipality which lawfully may be utilized for such purpose or if the municipality is authorized by law to levy taxes upon property such payment may be made from moneys received from the issuance of no-fund warrants, temporary notes or general obligation bonds, provided that warrants or temporary notes issued shall mature serially at such yearly dates as to be payable by not more than 10 tax levies and any bonds shall be issued in accordance with the provisions of the general bond law and shall be in addition to and not subject to any bonded debt limitation prescribed by any other law of the state of Kansas; and

**WHEREAS**, the City of Wichita, Kansas (the "City"), is a municipality within the meaning of the Act; and

**WHEREAS**, the governing body of the City of Wichita has heretofore approved a certain Settlement Agreement in the amount of \$40,000 relating to an incident occurring on January 22, 2014, involving a City transit van; and

**WHEREAS**, the governing body of the City hereby finds and determines it to be necessary to authorize the issuance of general obligation bonds of the City to finance the Settlement and related costs.

**THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:**

**SECTION 1. Financing.** The City is hereby authorized to issue general obligation bonds (the "Bonds") pursuant to the authority of the Act in an amount necessary to pay the costs of the Settlement, plus interest on interim financing and associated financing costs. Bonds may be issued to reimburse Settlement expenditures made on or after the date which is 60 days before the date of adoption of this Resolution, pursuant to Treasury Regulation §1.150-2.

**SECTION 2. Effective Date.** This Resolution shall take effect and be in full force from and after its adoption by the governing body of the City.

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**ADOPTED** by the City Council of the City of Wichita, Kansas, on October 18, 2016.

(SEAL)

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Jeff Longwell, Mayor

ATTEST:

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Karen Sublett, City Clerk

APPROVED AS TO FORM:

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Jennifer L. Magana  
City Attorney and Director of Law

City of Wichita  
City Council Meeting  
October 18, 2016

**TO:** Mayor and City Council Members

**SUBJECT:** Police Impound Towing Contracts

**INITIATED BY:** Wichita Police Department

**AGENDA:** Consent

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**Recommendation:** Approve the Police impound towing contracts.

**Background:** Currently, wrecker companies are licensed by the City of Wichita to perform emergency towing services. Emergency tows are those requested by the Police Department for wrecked vehicles at accident scenes. A towing rotation has been established, and licensed wrecker companies are called sequentially whenever an emergency tow is necessary. Fees for emergency tows are established by the wrecker companies at the time of licensing. In addition, the Wichita Police Department impounds abandoned vehicles as well as vehicles when the driver is arrested. Wrecker companies are licensed for a one-year period.

On February 14, 2011, the City Council approved contracts to provide impound towing services. The one-year (1) contracts included three (3) one-year extensions. The current Impound Towing, Storage and Auction contracts have been extended to October 31, 2016, under the same terms and conditions.

**Analysis:** On August 24, 2016, a Request for Proposal (RFP) was sent out for the purpose of obtaining a towing, storage and on-line auction service to handle all Police-initiated impounds. Eleven (11) proposal submittals were received for this RFP. After staff review and analysis of all the proposal submittals, the Staff Screening and Selection Committee (SSSC) interviewed eight (8) towing companies, one (1) auction firm, and one (1) dispatch and tracking solutions company. The SSSC deemed that all eight (8) of the towing firms met the stated evaluation criteria in the RFP. The terms of the proposed contracts include the following changes from the previous impound towing contracts:

- The administrative fee collected and remitted to the City on each released vehicle is increased from \$20 to \$30;
- Each wrecker company is allowed to auction vehicles using their selected on-line auction service;
- Each wrecker company will remit \$125 for each vehicle auctioned (15% of the gross proceeds from the sale of all other items such as trailers, motorcycles, etc.) to the City; and
- Each wrecker company is indemnifying the City for any liability associated with the improper sale of a vehicle or the failure to provide proper notification of the sale to the legal owner of a vehicle.

At each renewal period, staff may extend the contract terms to any licensed wrecking company that is appropriately licensed and agrees to be bound by the contractual provisions.

**Financial Considerations:** The amounts received by the City for auctioned vehicles is expected to reach \$50,000 annually, assuming 400 vehicles are auctioned. In addition, the \$30 administrative fee is expected to generate \$30,000 annually. This revenue is expected to offset Police Department costs of administering the provisions of the City Code pertaining to impound towing, as well as other regulatory and contractual provisions.



**Legal Considerations:** The proposed contracts have been reviewed and approved as to form by the Law Department.

**Recommendations/Actions:** It is recommended that the City Council approve the Police impound towing contracts and authorize the necessary signatures.

**Attachments:** Impound Towing Contracts

**AGREEMENT FOR IMPOUND SERVICES**  
**Wrecker Contractor**

**THIS AGREEMENT** is made between the City of Wichita, Kansas (hereinafter referred to as the City) and **Arrow Wrecker Service, Inc., 531 E MacArthur Road, Wichita, KS 67216**, Telephone (316)522-8156, (hereinafter referred to as the Wrecker Contractor) on the 1st day of November, 2016.

**WHEREAS**, the City desires to employ the services of the Wrecker Contractor to provide 24/7 full service Impound Towing and Storage. These impound tow services will be for vehicles impounded as directed by the Wichita Police Department pursuant to Section 11.97.010 et seq. of the Code of the City of Wichita. Examples of impounded vehicles are tows from arrests, accidents, and abandoned vehicles. Wrecker Contractor will auction the impounded vehicles as directed by the Wichita Police Department utilizing the auction service selected by Wrecker contractor; and

**WHEREAS**, the **CITY** has solicited a proposal for impound towing, storage, and on-line auction services (Formal Proposal – FP640016; and

**WHEREAS**, the City has sought competitive proposals for this purpose under Proposal No. FP640016, and Wrecker Contractor has submitted the proposal beneficial to the City; and

**WHEREAS**, the Wrecker Contractor is capable of providing the impound towing, storage, and on-line auction services required; and

**WHEREAS** K.S.A. 8-1101 et seq. are the state laws applicable to the towing, removing, storing, sale, and release of vehicles by towing companies. The City and Wrecker Contractor are bound by the provisions of these State Statutes and City Code 11.97.010 et seq. and City Code 3.40 et seq. of the City of Wichita.

**NOW, THEREFORE**, the parties agree as follows:

- I. **Term.** The work under this Agreement shall commence on or about November 1, 2016. The term of this contract shall be from November 1, 2016, through February 28, 2018, with options to renew the contract under the same terms and conditions for four (4) successive one (1) year terms by mutual agreement of the parties. Wrecker Contractor will begin towing impounded vehicles to its own lot on November 1, 2016.
- II. **Services to be Performed by the Wrecker Contractor.** Wrecker Contractor shall provide to the **CITY** those services specified in its response to Formal Proposal Number – FP640016, which are incorporated herein by this reference the same as if it were fully set forth. The request for proposal package, including all specifications and addendums, provided by the City of Wichita as part of the request for proposal letting process for FP640016, shall be considered a part of this contract and is incorporated by reference herein.

a. Agreement

The parties agree that during the terms of this agreement the City of Wichita may establish its own wrecker service that may be included in the S.P.I.D.E.R. rotation list for Police Impound Services. The City of Wichita reserves the right during the renewal term of this agreement to include additional licensed Wrecker Contractors or entities that meet the City Towing Ordinances, and agree to the existing terms of this contract, may be added to the current Wrecker Contractor list in the S.P.I.D.E.R. rotation. Compliance with State and local regulations is the responsibility of the Wrecker Contractor.

Wrecker Contractor will be available twenty-four (24) hours a day, seven (7) days a week, 365 days per year, to respond to calls for service. Wrecker Contractor will respond to police dispatched calls within forty-five (45) minutes of the time the call is received, except in inclement weather.

Wrecker Contractor will completely remove all resulting wreckage, debris, and reasonable amounts of fluids which are dropped or spilled from the site of an accident. Prior to leaving the scene of an accident, Wrecker Contractor will remove any and all other reasonable amounts of substances dropped upon the highway from such vehicle(s), including all broken glass which remains in the street, but excluding truck or vehicle cargos.

Wichita Police Department may direct Wrecker Contractor to tow impound vehicles and all other items without a VIN directly to the City of Wichita, Central Maintenance Facility, 1801 S. McLean, Wichita, KS. Wichita Police Department will pay the cost of the tow to the Wrecker Contractor as per the fee schedule as stated in Exhibit B.

All wreckers will be clearly and permanently marked with the name and address of the licensee on both doors of the vehicle. All wrecker drivers shall wear shirts identifying the licensee's company name. All wreckers will be registered with the Kansas Corporation Commission. Such registration shall remain current during the term of this agreement.

Wrecker Contractor will have a minimum of three (3) tow trucks, all of which will be a minimum 16,000 GVW.

Wrecker Contractor will provide a lot capacity of at least 15,000 square feet. Wrecker Contractor will have a clearly identified space exclusively for Wichita Police Department impounds. Such area does not have to be the entire 15,000 square foot lot size. The properties need to be properly zoned and, if required, have a Conditional Use Permit that would allow the uses that would be able to be used for this agreement.

Wrecker Contractor will maintain an office adjacent to its storage facility to enable legal owners of vehicles to retrieve their vehicles. This office will be open to the public 365 days per year, daily from 7 a.m. to 7 p.m. so that the owners may retrieve their vehicles.

Wrecker Contractor will provide a contact person and telephone number that will be responsible for dealing with the public and the Wichita Police Department staff, along with the handling of any complaints.

Wrecker Contractor will digitally photograph all vehicles prior to impounding the vehicle. A minimum of ten (10) digital photographs shall be taken per vehicle and emailed daily to the Wichita Police Department's Property and Evidence Section. Photographs of the engine/transmission, front of vehicle, right side of vehicle, left side of vehicle, rear of vehicle, keys, contents of front seat, contents of back seat, contents of trunk unless inaccessible, odometer reading if available, and interior (mainly the dash area to capture stereo equipment), and one photograph of the VIN number are mandatory. Such photos will be stored by Wrecker Contractor for sixty (60) days, or until the vehicle is released and the photographs are available for the Wichita Police Property and Evidence staff to view and print.

Wrecker Contractor will accept credit cards or debit cards for payment for the release of Impound vehicles at no additional cost to the owner.

Wrecker Contractor will keep up-to-date with all federal, state and local income, sales and property taxes. Wrecker Contractor will pay, all federal and state withholding taxes when due.

Wrecker Contractor will be a properly organized Kansas Corporation authorized to transact business within the State of Kansas. Wrecker Contractor shall, at all times, remain in good standing with the Kansas Secretary of State.

Wrecker Contractor shall comply with all Kansas Statutes and city ordinances and any subsequent amendments thereto, relative to the towing, removing, or storing of vehicles at the request of the City, and the sale or release of vehicles by the Wrecker Contractor. Failure to comply with these applicable laws shall constitute grounds for termination of the contract.

#### b. Reporting

Wrecker Contractor will be required to furnish the following monthly reports to the Wichita Police Department by the 10<sup>th</sup> day of the following month:

Wrecker Contractor will complete the Wichita Police Department's form that details all charges for each impound tow. Monthly reports will be provided by the Wrecker Contractor of all of the Wichita Police Department's invoiced impound property on hand, detailed billing of each impound tow, to include vehicle information (color, make/model, year, VIN), case number, the purchased price at the on-line auction, and the amount to be paid to the Wichita Police Department. These reports shall be submitted to Wichita Police Department staff by the 10<sup>th</sup> day of the following month. Other reports to facilitate auditing may be requested during this agreement as requested by the Wichita Police Department staff.

Wrecker Contractor will provide electronic daily reports to the Wichita Police Department's Property and Evidence staff, including digital photographs of each towed vehicle. Reports should include the time and date of the tow, location of tow request, time the tow unit is on the scene, time the towed vehicle arrived at the storage facility, total mileage of the tow, tow truck number and driver, the lot the vehicle was towed to, year, make, model, VIN number, and case number if available. Release documents of vehicles returned to owners shall be submitted to the Wichita Police Department within twenty-four (24) hours of the release of the vehicle.

There is a maximum of forty (40) days of storage at twenty seven dollars (\$27) per day that may be charged to vehicles that are released back to the owners.

c. Disposition of Vehicles

The Wichita Police Department will provide the first legal notification to the owner of the impounded vehicle at the City's expense, as required by State Statute. The remaining statutory notifications are the sole responsibility of the Wrecker Contractor. All costs associated with the required subsequent notifications shall be at the sole expense of the Wrecker Contractor. After the required statutory period has passed, Wrecker Contractor will be allowed to auction the vehicle. The disposal of impounded vehicles shall be in compliance pursuant to all of the requirements set forth in K.S.A. 8-1102. Wrecker Contractor will hold the City harmless and indemnify the City from all claims, suits, actions, and proceedings of every name or description as a result the improper sale of any vehicle, or Wrecker Contractor's failure to properly notify the legal owner of the sale as required by law, unless the City illegally or improperly impounded the vehicle.

Wrecker Contractor will utilize their selected auction firm for selling impounded vehicles utilizing an on-line auction services. Wrecker Contractor shall notify the Wichita Police Department within twenty (20) days of execution of this agreement, the Auction Firm they have selected. Wrecker Contractor may not own, or have any ownership interest, in any Auction Firm used by the Wrecker Contractor. The Wichita Police Department must be notified in writing within ten (10) days of any change in the selected Auction Firm. The selected Auction Firm representative will photograph and write a description of each vehicle or equipment to be sold. Vehicles and/or equipment will be sold in the next available auction, after the required thirty (30) day waiting period, or as required in State Statute.

The selected Auction Firm will advertise a Legal Publication of the vehicle(s) and/or equipment sale and send the legal publication affidavit to Wichita Police Department staff prior to the sale date. The Wrecker Contractor will remove and properly dispose of (destroy) the license plates from vehicles prior to the auction date. All publication costs are the sole responsibility of the Wrecker Contractor or its selected Auction Firm.

Wrecker Contractor shall allow potential public auction purchasers the ability to register, bid on impound vehicles and have access to inspect vehicles by appointment only, or a

designated open house, during normal business hours between 8:00 a.m. and 5:00 p.m., Monday through Friday.

Wrecker Contractor shall allow, without the assessment of storage fees, purchasers seven (7) days following the close of an auction to take delivery of a purchased vehicle. On the seventh day, Wrecker Contractor shall notify their selected auction representative, if the vehicle is not picked up by the purchaser. If such vehicle is not picked up within that time frame, Wrecker Contractor may assess storage fees of twenty seven dollars (\$27) per day for each additional day the vehicle remains on the lot, to be paid for by the purchaser. If a vehicle is not picked up within ten (10) days following the close of an auction, Wrecker Contractor may sell the vehicle at the next scheduled auction.

- III. ***Wrecker Fees for Release Vehicles.*** Wrecker Contractor shall assess towing and storage fees in an amount not to exceed those set forth in Exhibit B attached hereto. In addition, Wrecker Contractor agrees to collect a fee of thirty dollars (\$30) per released vehicle for notices, to be processed by the Wichita Police Department. Such fee shall be transmitted to the Wichita Police Department monthly.

IV. ***Conditions of Agreement***

Wichita Police Department reserves the right to have any vehicle returned to the possession of the Department, or its rightful owner, prior to auction, even if the item has already been collected by proposer, if all fees accumulated to date are paid in full. The Wichita Police Department will have the right to any vehicle that is part of a criminal investigation.

Wichita Police Department may conduct regular and unannounced random inspections of the Wrecker Contractor facility twenty-four (24) hours a day, seven (7) days per week, and 365 days per year. Wrecker Contractor will allow the Wichita Police Department to monitor all administrative functions associated with Wichita Police Department vehicles taken into custody by the Wrecker Contractor.

During the performance of this contract, Wrecker Contractor shall retain, all records pertaining to this agreement for a period of three (3) years from the completion of the contract. Such records shall be available to the Wichita Police Department during the Wrecker Contractor's normal working hours.

City reserves the right to conduct an audit of all Wrecker Contractor documents relating to this contract on a regular and unannounced random basis. All files relative to this agreement will be made available during normal working hours.

- V. ***Billing and Payment.*** Impounded vehicles will be sold utilizing the Auction Firm selected by the Wrecker Contractor. The selected Auction Firm will be utilized for the annual term of the contract.

The selected Auction Firm or Wrecker Contractor will remit one hundred and twenty-five dollars (\$125) to the Wichita Police Department per four-wheeled vehicle with an engine

and transmission sold, with the remaining of the auction proceeds to be paid to the Wrecker Contractor for the towing and storage fees of each vehicle. The Wichita Police Department will be paid an amount of one hundred and twenty-five dollars (\$125) for each such impounded vehicle sold by the selected Auction Firm, regardless of the sale price of the impounded vehicle. The selected Auction Firm or Wrecker Contractor will remit fifteen percent (15%) of the gross sale price of all other items sold at auction to the Wichita Police Department. Wrecker Contractor shall provide verification to the Wichita Police Department of all such vehicles or other items that have been approved by Wichita Police Department to be properly destroyed and shall keep any proceeds obtained from the destruction of property. The selected Auction Firm or Wrecker Contractor shall make payment Wichita Police Department for each impound vehicle sold within twenty (20) business days of the sale of the vehicle.

The Auction Firm shall remit detailed auction sale invoices to the Wichita Police Department from each completed auction, detailing the vehicle VIN number, impound case number and sale price to Wichita Police Department. The City will audit and verify the sale of impound vehicles from the payments submitted by the Auction Firm or Wrecker Contractor, as well as the sale price of the sold impound vehicles for reporting purposes.

Any personal property not returned to the owner of the impounded vehicle shall be sold at public auction and Auction Firm will provide an auction report to Wichita Police Department. The Wrecker Contractor shall receive, the auction sale price of such personal property. No proceeds of the sale of personal property shall be required to be transmitted to the Wichita Police Department.

- VI. ***Independent Contractor Status.*** The Wrecker Contractor's status for conduct of tasks described herein shall be as an independent contractor, and not as an agent or employee of the City. Any and all employees or agents of the Wrecker Contractor while engaged in the performance of any work or service required by the Wrecker Contractor under this Agreement shall be considered employees of the Wrecker Contractor only and not of the City. Any and all claims that may arise under the Kansas Workers' Compensation Act on behalf of said employees while so engaged, and any and all claims made by a third party as a consequence of any act or omission on the part of the Wrecker Contractor's employees or agents while so engaged in any of the work or service anticipated herein shall be the sole obligation and responsibility of the Wrecker Contractor.
- VII. ***Acceptance Procedure.*** The Wrecker Contractor shall render the deliverables as described in services to be performed, under the terms and conditions thereof. The City shall have a maximum of thirty (30) days from the delivery completed reports and recommendations within which to respond in writing to such delivery. If the City believes the completed work does not conform to the requirements of the Agreement, it shall notify the Wrecker Contractor in writing thereof, within the above-mentioned thirty (30) days and shall indicate with particularity in what manner the reports fails to conform. In the absence of such notice of non-conformance, acceptance of the work will be presumed.

- VIII. ***Nondiscrimination in Employment.*** During the performance of this Agreement, the Wrecker Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, disability, ancestry or national origin. The City's anti-discrimination requirements, attached as Exhibit A, are made a part of this Agreement by reference.
- IX. ***Termination by the City.*** If, for any cause within the term this Agreement, the Wrecker Contractor shall fail to fulfill its obligations under this Agreement in a timely and proper manner as required by this Agreement, or if the Wrecker Contractor shall violate any of the covenants, agreements, or stipulations of this Agreement, the City shall notify the Wrecker Contractor within ten (10) days of the violation. If the Wrecker Contractor has not remedied the violation within ten (10) days to the City's approval and acceptance, thereupon the City at its discretion shall have the right to terminate this Agreement by giving written notice to the Wrecker Contractor of such termination, effective thirty (30) days following receipt of same, provided, however, that the Wrecker Contractor shall be provided a reasonable time within which to remedy such deficiencies. The Wrecker Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed prior to the effective date of such termination.
- X. ***Termination by the Wrecker Contractor.*** The Wrecker Contractor may terminate this Agreement at any time for failure of the City to comply with any material terms or conditions of this Agreement, effective sixty (60) days following receipt, provided, however, that the City shall be provided a reasonable time within which to remedy such deficiencies. Wrecker Contractor may terminate this Agreement for any reason with one hundred and eighty (180) days written notice to the City.
- XI. ***Governing Law.*** The laws of the State of Kansas shall govern the validity, construction, interpretation, and effect of this Agreement.
- XII. ***Waivers.*** The failure of the parties to enforce, at any time, the provisions of this Agreement or to exercise any option which may be provided herein shall not be construed as a waiver of such provisions or to affect the validity of this Agreement or any part thereof or the right of the parties to enforce thereafter each and every provision and to exercise any such option. No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach. All remedies available under this Agreement shall be taken and construed as cumulative, that is, as being in addition to every other remedy provided by operation of law.



XIII. ***Representatives of Contracting Parties.*** The following designated parties shall represent the parties to this Agreement for notification and communication as may be required:

(a) Representing the City:

Chief of Police or designee  
Wichita Police Department  
455 N. Main 4<sup>th</sup> floor  
Wichita, Kansas 67202  
316-268-4158

(b) Representing the Wrecker Contractor:

Arrow Wrecker Service, Inc.  
Attn: Ms. Diane Richardson  
531 E MacArthur Road  
Wichita, KS 67216  
(316)522-8156

XIV. ***Insurance and Indemnification.***

A. Wrecker Contractor will carry occurrence insurance coverage during the term of this Contract and any extensions thereof in the amounts and manner provided as follows:

1. Comprehensive General Liability covering premises—operations, Broad Form Property Damage and Contractual Liability with minimum limits as follows:

Bodily Injury Liability	\$1,000,000 each occurrence \$1,000,000 each aggregate
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Property Damage Liability	\$1,000,000 each occurrence \$1,000,000 each aggregate
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Or

Bodily Injury and Property Damage Liability (Combined Single Limit)	\$1,000,000 each occurrence \$1,000,000 each aggregate
---------------------------------------------------------------------	-----------------------------------------------------------

2. Automobile Liability - Comprehensive Form including all owned, hired and non-owned vehicles with minimum limits for:

Bodily Injury Liability	\$1,000,000 each accident
Property Damage Liability	\$1,000,000 each accident

Or

Bodily Injury and Property Damage Liability (Combined Single Limit)	\$1,000,000 each accident
------------------------------------------------------------------------	---------------------------

3. Workers' Compensation/Employers Liability for minimum limits of:

Employers Liability	\$100,000 each accident
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4. Coverage shall include garage keeper's insurance as per license requirement.

- B. Wrecker Contractor shall save and hold the City harmless against all suits, claims, damages and losses for injuries to persons or property arising from or caused by errors, omissions or negligent acts of Wrecker Contractor, its officers, agents, servants, or employees, occurring in the performance of its services under this Agreement.

Wrecker Contractor will indemnify the City from all claims, suits, actions and proceedings of every name or description, in law or equity, including defense costs relating to or an account to any injuries or damages received or sustained by any person, firm or corporation as a result of any act or omission of Wrecker Contractor while engaged in any action or providing any service pursuant to this Agreement.

- XV. ***Prohibition Against Assignment and Delegation.*** Notwithstanding any other provision of this Agreement, the Wrecker Contractor warrants that it shall not transfer, pledge, or otherwise assign this Agreement, or any interest therein, or any claim arising there under, to any party or parties, bank, trust, company, or other financing institution. None of the Wrecker Contractor's duties under this Agreement may be delegated to or sub-contracted to any persons other than those described in the successful proposal without the express written permission of the City.

- XVI. ***Third Party Rights.*** It is specifically agreed between the parties that it is not intended by any of the provisions of this Agreement to create in the public or any member thereof a third-party beneficiary hereunder, or to authorize anyone not a party to this Agreement to maintain a suit for damages pursuant to the terms or provisions of this Agreement.

- XVII. ***Compliance with Laws.*** The Wrecker Contractor shall comply with all laws, statutes and ordinances that may pertain to the providing of services under this Agreement.

- XVIII. ***Representative's Authority to Contract.*** By signing this contract, the representative of the **WRECKER CONTRACTOR** represents that he or she is duly authorized by the **WRECKER CONTRACTOR** to execute this contract, and that the **WRECKER CONTRACTOR** has agreed to be bound by all its provisions.

**IN WITNESS WHEREOF**, the parties have set their hands the day and year first above written.

Attest:

City of Wichita, KS

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Karen Sublett  
City Clerk

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Jeff Longwell  
Mayor

Approved as to Form:

Arrow Wrecker Service, Inc.

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Jennifer Magana  
City Attorney and Director of Law

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Owner Name

## **EXHIBIT A**

### **REVISED NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION PROGRAM REQUIREMENTS STATEMENT FOR CONTRACTS OR AGREEMENTS**

During the term of this contract, the contractor or subcontractor, Contractor or supplier of the City, by whatever term identified herein, shall comply with the following Non-Discrimination--Equal Employment Opportunity/Affirmative Action Program Requirements:

- A. During the performance of this contract, the contractor, subcontractor, Contractor or supplier of the City, or any of its agencies, shall comply with all the provisions of the Civil Rights Act of 1964, as amended: The Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11131; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and laws, regulations or amendments as may be promulgated thereunder.
- B. Requirements of the State of Kansas:
  - 1. The contractor shall observe the provisions of the Kansas Act against Discrimination (Kansas Statutes Annotated 44-1001, et seq.) and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, and age except where age is a bona fide occupational qualification, national origin or ancestry;
  - 2. In all solicitations or advertisements for employees, the contractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase to be approved by the "Kansas Human Rights Commission";
  - 3. If the contractor fails to comply with the manner in which the contractor reports to the "Kansas Human Rights Commission" in accordance with the provisions of K.S.A. 1976 Supp. 44-1031, as amended, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
  - 4. If the contractor is found guilty of a violation of the Kansas Act against Discrimination under a decision or order of the "Kansas Human Rights Commission" which has become final, the contractor shall be deemed to have breached the present contract, and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

5. The contractor shall include the provisions of Paragraphs 1 through 4 inclusive, of this Subsection B, in every subcontract or purchase so that such provisions will be binding upon such subcontractor or Contractor.
- C. Requirements of the City of Wichita, Kansas, relating to Non-Discrimination -- Equal Employment Opportunity/Affirmative Action Program Requirements:
1. The Contractor, supplier, contractor or subcontractor shall practice Non-Discrimination -- Equal Employment Opportunity in all employment relations, including but not limited to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The contractor, supplier, contractor or subcontractor shall submit an Equal Employment Opportunity or Affirmative Action Program, when required, to the Department of Finance of the City of Wichita, Kansas, in accordance with the guidelines established for review and evaluation;
  2. The Contractor, supplier, contractor or subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, supplier, contractor or subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, "disability, and age except where age is a bona fide occupational qualification", national origin or ancestry. In all solicitations or advertisements for employees the Contractor, supplier, contractor or subcontractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase;
  3. The Contractor, supplier, contractor or subcontractor will furnish all information and reports required by the Department of Finance of said City for the purpose of investigation to ascertain compliance with Non-Discrimination -- Equal Employment Opportunity Requirements. If the Contractor, supplier, contractor, or subcontractor fails to comply with the manner in which he/she or it reports to the City in accordance with the provisions hereof, the Contractor, supplier, contractor or subcontractor shall be deemed to have breached the present contract, purchase order or agreement and it may be canceled, terminated or suspended in whole or in part by the City or its agency; and further Civil Rights complaints, or investigations may be referred to the State;
  4. The Contractor, supplier, contractor or subcontractor shall include the provisions of Subsections 1 through 3 inclusive, of this present section in every subcontract, subpurchase order or subagreement so that such provisions will be binding upon each subcontractor, subcontractor or subsupplier.

5. If the contractor fails to comply with the manner in which the contractor reports to the Department of Finance as stated above, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

D. Exempted from these requirements are:

1. Those contractors, subcontractors, Contractors or suppliers who have less than four (4) employees, whose contracts, purchase orders or agreements cumulatively total less than five thousand dollars (\$5,000) during the fiscal year of said City are exempt from any further Equal Employment Opportunity or Affirmative Action Program submittal.
2. Those Contractors, suppliers, contractors or subcontractors who have already complied with the provisions set forth in this section by reason of holding a contract with the Federal government or contract involving Federal funds; provided that such contractor, subcontractor, Contractor or supplier provides written notification of a compliance review and determination of an acceptable compliance posture within a preceding forty-five (45) day period from the Federal agency involved.

**EXHIBIT B**  
**WRECKER FEES**

No additional charges will be levied against vehicles towed under this Agreement without the written authorization of the Chief of Police or his designee, or at the request of the owner. The following fees shall apply to all Police Impounds. For Light Duty Towing there will be no tow charge that shall exceed \$185 unless the vehicle requires up righting or winching.

1. Light Duty Towing: \$95 hook up fee plus \$4.00 per loaded mile. Additional Charges include: Up righting - \$45; Dolly Service - \$43; Winching - \$25 per one-fourth hour; Waiting Time - \$15 per one-fourth hour;
2. Storage: \$27 per day; heavy duty storage: \$50 per day per unit
3. Tarp Fee: \$15
4. Oil Dry: \$15
5. Lot Fee: \$15
6. Medium/Heavy Duty Towing & Recovery: \$250 per hour portal to portal
7. Heavy Duty Landoll: Specialized Low Boy Transport \$250 per hour portal to portal
8. Clean up that requires loader, bobcats, power brooms, forklifts, and/or extra man power to be added to any tow based on the actual cost plus basis of the service rendered plus 10%.
9. Wichita Police Department Processing Fee for Notices: \$30

Any Police Impound released to the owner of the vehicle will have a maximum storage of forty five (45) days.

**AGREEMENT FOR IMPOUND SERVICES**  
**Wrecker Contractor**

**THIS AGREEMENT** is made between the City of Wichita, Kansas (hereinafter referred to as the City) and **Bud Roat Towing, 310 N Handley, Wichita, KS 67203**, Telephone (316)267-2040, (hereinafter referred to as the Wrecker Contractor) on the 1st day of November, 2016.

**WHEREAS**, the City desires to employ the services of the Wrecker Contractor to provide 24/7 full service Impound Towing and Storage. These impound tow services will be for vehicles impounded as directed by the Wichita Police Department pursuant to Section 11.97.010 et seq. of the Code of the City of Wichita. Examples of impounded vehicles are tows from arrests, accidents, and abandoned vehicles. Wrecker Contractor will auction the impounded vehicles as directed by the Wichita Police Department utilizing the auction service selected by Wrecker contractor; and

**WHEREAS**, the **CITY** has solicited a proposal for impound towing, storage, and on-line auction services (Formal Proposal – FP640016; and

**WHEREAS**, the City has sought competitive proposals for this purpose under Proposal No. FP640016, and Wrecker Contractor has submitted the proposal beneficial to the City; and

**WHEREAS**, the Wrecker Contractor is capable of providing the impound towing, storage, and on-line auction services required; and

**WHEREAS** K.S.A. 8-1101 et seq. are the state laws applicable to the towing, removing, storing, sale, and release of vehicles by towing companies. The City and Wrecker Contractor are bound by the provisions of these State Statutes and City Code 11.97.010 et seq. and City Code 3.40 et seq. of the City of Wichita.

**NOW, THEREFORE**, the parties agree as follows:

- I. **Term.** The work under this Agreement shall commence on or about November 1, 2016. The term of this contract shall be from November 1, 2016, through February 28, 2018, with options to renew the contract under the same terms and conditions for four (4) successive one (1) year terms by mutual agreement of the parties. Wrecker Contractor will begin towing impounded vehicles to its own lot on November 1, 2016.
- II. **Services to be Performed by the Wrecker Contractor.** Wrecker Contractor shall provide to the **CITY** those services specified in its response to Formal Proposal Number – FP640016, which are incorporated herein by this reference the same as if it were fully set forth. The request for proposal package, including all specifications and addendums, provided by the City of Wichita as part of the request for proposal letting process for FP640016, shall be considered a part of this contract and is incorporated by reference herein.



a. Agreement

The parties agree that during the terms of this agreement the City of Wichita may establish its own wrecker service that may be included in the S.P.I.D.E.R. rotation list for Police Impound Services. The City of Wichita reserves the right during the renewal term of this agreement to include additional licensed Wrecker Contractors or entities that meet the City Towing Ordinances, and agree to the existing terms of this contract, may be added to the current Wrecker Contractor list in the S.P.I.D.E.R. rotation. Compliance with State and local regulations is the responsibility of the Wrecker Contractor.

Wrecker Contractor will be available twenty-four (24) hours a day, seven (7) days a week, 365 days per year, to respond to calls for service. Wrecker Contractor will respond to police dispatched calls within forty-five (45) minutes of the time the call is received, except in inclement weather.

Wrecker Contractor will completely remove all resulting wreckage, debris, and reasonable amounts of fluids which are dropped or spilled from the site of an accident. Prior to leaving the scene of an accident, Wrecker Contractor will remove any and all other reasonable amounts of substances dropped upon the highway from such vehicle(s), including all broken glass which remains in the street, but excluding truck or vehicle cargos.

Wichita Police Department may direct Wrecker Contractor to tow impound vehicles and all other items without a VIN directly to the City of Wichita, Central Maintenance Facility, 1801 S. McLean, Wichita, KS. Wichita Police Department will pay the cost of the tow to the Wrecker Contractor as per the fee schedule as stated in Exhibit B.

All wreckers will be clearly and permanently marked with the name and address of the licensee on both doors of the vehicle. All wrecker drivers shall wear shirts identifying the licensee's company name. All wreckers will be registered with the Kansas Corporation Commission. Such registration shall remain current during the term of this agreement.

Wrecker Contractor will have a minimum of three (3) tow trucks, all of which will be a minimum 16,000 GVW.

Wrecker Contractor will provide a lot capacity of at least 15,000 square feet. Wrecker Contractor will have a clearly identified space exclusively for Wichita Police Department impounds. Such area does not have to be the entire 15,000 square foot lot size. The properties need to be properly zoned and, if required, have a Conditional Use Permit that would allow the uses that would be able to be used for this agreement.

Wrecker Contractor will maintain an office adjacent to its storage facility to enable legal owners of vehicles to retrieve their vehicles. This office will be open to the public 365 days per year, daily from 7 a.m. to 7 p.m. so that the owners may retrieve their vehicles.

Wrecker Contractor will provide a contact person and telephone number that will be responsible for dealing with the public and the Wichita Police Department staff, along with the handling of any complaints.

Wrecker Contractor will digitally photograph all vehicles prior to impounding the vehicle. A minimum of ten (10) digital photographs shall be taken per vehicle and emailed daily to the Wichita Police Department's Property and Evidence Section. Photographs of the engine/transmission, front of vehicle, right side of vehicle, left side of vehicle, rear of vehicle, keys, contents of front seat, contents of back seat, contents of trunk unless inaccessible, odometer reading if available, and interior (mainly the dash area to capture stereo equipment), and one photograph of the VIN number are mandatory. Such photos will be stored by Wrecker Contractor for sixty (60) days, or until the vehicle is released and the photographs are available for the Wichita Police Property and Evidence staff to view and print.

Wrecker Contractor will accept credit cards or debit cards for payment for the release of Impound vehicles at no additional cost to the owner.

Wrecker Contractor will keep up-to-date with all federal, state and local income, sales and property taxes. Wrecker Contractor will pay, all federal and state withholding taxes when due.

Wrecker Contractor will be a properly organized Kansas Corporation authorized to transact business within the State of Kansas. Wrecker Contractor shall, at all times, remain in good standing with the Kansas Secretary of State.

Wrecker Contractor shall comply with all Kansas Statutes and city ordinances and any subsequent amendments thereto, relative to the towing, removing, or storing of vehicles at the request of the City, and the sale or release of vehicles by the Wrecker Contractor. Failure to comply with these applicable laws shall constitute grounds for termination of the contract.

#### b. Reporting

Wrecker Contractor will be required to furnish the following monthly reports to the Wichita Police Department by the 10<sup>th</sup> day of the following month:

Wrecker Contractor will complete the Wichita Police Department's form that details all charges for each impound tow. Monthly reports will be provided by the Wrecker Contractor of all of the Wichita Police Department's invoiced impound property on hand, detailed billing of each impound tow, to include vehicle information (color, make/model, year, VIN), case number, the purchased price at the on-line auction, and the amount to be paid to the Wichita Police Department. These reports shall be submitted to Wichita Police Department staff by the 10<sup>th</sup> day of the following month. Other reports to facilitate auditing may be requested during this agreement as requested by the Wichita Police Department staff.

Wrecker Contractor will provide electronic daily reports to the Wichita Police Department's Property and Evidence staff, including digital photographs of each towed vehicle. Reports should include the time and date of the tow, location of tow request, time the tow unit is on the scene, time the towed vehicle arrived at the storage facility, total mileage of the tow, tow truck number and driver, the lot the vehicle was towed to, year, make, model, VIN number, and case number if available. Release documents of vehicles returned to owners shall be submitted to the Wichita Police Department within twenty-four (24) hours of the release of the vehicle.

There is a maximum of forty (40) days of storage at twenty seven dollars (\$27) per day that may be charged to vehicles that are released back to the owners.

c. Disposition of Vehicles

The Wichita Police Department will provide the first legal notification to the owner of the impounded vehicle at the City's expense, as required by State Statute. The remaining statutory notifications are the sole responsibility of the Wrecker Contractor. All costs associated with the required subsequent notifications shall be at the sole expense of the Wrecker Contractor. After the required statutory period has passed, Wrecker Contractor will be allowed to auction the vehicle. The disposal of impounded vehicles shall be in compliance pursuant to all of the requirements set forth in K.S.A. 8-1102. Wrecker Contractor will hold the City harmless and indemnify the City from all claims, suits, actions, and proceedings of every name or description as a result the improper sale of any vehicle, or Wrecker Contractor's failure to properly notify the legal owner of the sale as required by law, unless the City illegally or improperly impounded the vehicle.

Wrecker Contractor will utilize their selected auction firm for selling impounded vehicles utilizing an on-line auction services. Wrecker Contractor shall notify the Wichita Police Department within twenty (20) days of execution of this agreement, the Auction Firm they have selected. Wrecker Contractor may not own, or have any ownership interest, in any Auction Firm used by the Wrecker Contractor. The Wichita Police Department must be notified in writing within ten (10) days of any change in the selected Auction Firm. The selected Auction Firm representative will photograph and write a description of each vehicle or equipment to be sold. Vehicles and/or equipment will be sold in the next available auction, after the required thirty (30) day waiting period, or as required in State Statute.

The selected Auction Firm will advertise a Legal Publication of the vehicle(s) and/or equipment sale and send the legal publication affidavit to Wichita Police Department staff prior to the sale date. The Wrecker Contractor will remove and properly dispose of (destroy) the license plates from vehicles prior to the auction date. All publication costs are the sole responsibility of the Wrecker Contractor or its selected Auction Firm.

Wrecker Contractor shall allow potential public auction purchasers the ability to register, bid on impound vehicles and have access to inspect vehicles by appointment only, or a

designated open house, during normal business hours between 8:00 a.m. and 5:00 p.m., Monday through Friday.

Wrecker Contractor shall allow, without the assessment of storage fees, purchasers seven (7) days following the close of an auction to take delivery of a purchased vehicle. On the seventh day, Wrecker Contractor shall notify their selected auction representative, if the vehicle is not picked up by the purchaser. If such vehicle is not picked up within that time frame, Wrecker Contractor may assess storage fees of twenty seven dollars (\$27) per day for each additional day the vehicle remains on the lot, to be paid for by the purchaser. If a vehicle is not picked up within ten (10) days following the close of an auction, Wrecker Contractor may sell the vehicle at the next scheduled auction.

- III. ***Wrecker Fees for Release Vehicles.*** Wrecker Contractor shall assess towing and storage fees in an amount not to exceed those set forth in Exhibit B attached hereto. In addition, Wrecker Contractor agrees to collect a fee of thirty dollars (\$30) per released vehicle for notices, to be processed by the Wichita Police Department. Such fee shall be transmitted to the Wichita Police Department monthly.

IV. ***Conditions of Agreement***

Wichita Police Department reserves the right to have any vehicle returned to the possession of the Department, or its rightful owner, prior to auction, even if the item has already been collected by proposer, if all fees accumulated to date are paid in full. The Wichita Police Department will have the right to any vehicle that is part of a criminal investigation.

Wichita Police Department may conduct regular and unannounced random inspections of the Wrecker Contractor facility twenty-four (24) hours a day, seven (7) days per week, and 365 days per year. Wrecker Contractor will allow the Wichita Police Department to monitor all administrative functions associated with Wichita Police Department vehicles taken into custody by the Wrecker Contractor.

During the performance of this contract, Wrecker Contractor shall retain, all records pertaining to this agreement for a period of three (3) years from the completion of the contract. Such records shall be available to the Wichita Police Department during the Wrecker Contractor's normal working hours.

City reserves the right to conduct an audit of all Wrecker Contractor documents relating to this contract on a regular and unannounced random basis. All files relative to this agreement will be made available during normal working hours.

- V. ***Billing and Payment.*** Impounded vehicles will be sold utilizing the Auction Firm selected by the Wrecker Contractor. The selected Auction Firm will be utilized for the annual term of the contract.

The selected Auction Firm or Wrecker Contractor will remit one hundred and twenty-five dollars (\$125) to the Wichita Police Department per four-wheeled vehicle with an engine

and transmission sold, with the remaining of the auction proceeds to be paid to the Wrecker Contractor for the towing and storage fees of each vehicle. The Wichita Police Department will be paid an amount of one hundred and twenty-five dollars (\$125) for each such impounded vehicle sold by the selected Auction Firm, regardless of the sale price of the impounded vehicle. The selected Auction Firm or Wrecker Contractor will remit fifteen percent (15%) of the gross sale price of all other items sold at auction to the Wichita Police Department. Wrecker Contractor shall provide verification to the Wichita Police Department of all such vehicles or other items that have been approved by Wichita Police Department to be properly destroyed and shall keep any proceeds obtained from the destruction of property. The selected Auction Firm or Wrecker Contractor shall make payment Wichita Police Department for each impound vehicle sold within twenty (20) business days of the sale of the vehicle.

The Auction Firm shall remit detailed auction sale invoices to the Wichita Police Department from each completed auction, detailing the vehicle VIN number, impound case number and sale price to Wichita Police Department. The City will audit and verify the sale of impound vehicles from the payments submitted by the Auction Firm or Wrecker Contractor, as well as the sale price of the sold impound vehicles for reporting purposes.

Any personal property not returned to the owner of the impounded vehicle shall be sold at public auction and Auction Firm will provide an auction report to Wichita Police Department. The Wrecker Contractor shall receive, the auction sale price of such personal property. No proceeds of the sale of personal property shall be required to be transmitted to the Wichita Police Department.

- VI. ***Independent Contractor Status.*** The Wrecker Contractor's status for conduct of tasks described herein shall be as an independent contractor, and not as an agent or employee of the City. Any and all employees or agents of the Wrecker Contractor while engaged in the performance of any work or service required by the Wrecker Contractor under this Agreement shall be considered employees of the Wrecker Contractor only and not of the City. Any and all claims that may arise under the Kansas Workers' Compensation Act on behalf of said employees while so engaged, and any and all claims made by a third party as a consequence of any act or omission on the part of the Wrecker Contractor's employees or agents while so engaged in any of the work or service anticipated herein shall be the sole obligation and responsibility of the Wrecker Contractor.
- VII. ***Acceptance Procedure.*** The Wrecker Contractor shall render the deliverables as described in services to be performed, under the terms and conditions thereof. The City shall have a maximum of thirty (30) days from the delivery completed reports and recommendations within which to respond in writing to such delivery. If the City believes the completed work does not conform to the requirements of the Agreement, it shall notify the Wrecker Contractor in writing thereof, within the above-mentioned thirty (30) days and shall indicate with particularity in what manner the reports fails to conform. In the absence of such notice of non-conformance, acceptance of the work will be presumed.

- VIII. ***Nondiscrimination in Employment.*** During the performance of this Agreement, the Wrecker Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, disability, ancestry or national origin. The City's anti-discrimination requirements, attached as Exhibit A, are made a part of this Agreement by reference.
- IX. ***Termination by the City.*** If, for any cause within the term this Agreement, the Wrecker Contractor shall fail to fulfill its obligations under this Agreement in a timely and proper manner as required by this Agreement, or if the Wrecker Contractor shall violate any of the covenants, agreements, or stipulations of this Agreement, the City shall notify the Wrecker Contractor within ten (10) days of the violation. If the Wrecker Contractor has not remedied the violation within ten (10) days to the City's approval and acceptance, thereupon the City at its discretion shall have the right to terminate this Agreement by giving written notice to the Wrecker Contractor of such termination, effective thirty (30) days following receipt of same, provided, however, that the Wrecker Contractor shall be provided a reasonable time within which to remedy such deficiencies. The Wrecker Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed prior to the effective date of such termination.
- X. ***Termination by the Wrecker Contractor.*** The Wrecker Contractor may terminate this Agreement at any time for failure of the City to comply with any material terms or conditions of this Agreement, effective sixty (60) days following receipt, provided, however, that the City shall be provided a reasonable time within which to remedy such deficiencies. Wrecker Contractor may terminate this Agreement for any reason with one hundred and eighty (180) days written notice to the City.
- XI. ***Governing Law.*** The laws of the State of Kansas shall govern the validity, construction, interpretation, and effect of this Agreement.
- XII. ***Waivers.*** The failure of the parties to enforce, at any time, the provisions of this Agreement or to exercise any option which may be provided herein shall not be construed as a waiver of such provisions or to affect the validity of this Agreement or any part thereof or the right of the parties to enforce thereafter each and every provision and to exercise any such option. No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach. All remedies available under this Agreement shall be taken and construed as cumulative, that is, as being in addition to every other remedy provided by operation of law.

XIII. ***Representatives of Contracting Parties.*** The following designated parties shall represent the parties to this Agreement for notification and communication as may be required:

(a) Representing the City:

Chief of Police or designee  
Wichita Police Department  
455 N. Main 4<sup>th</sup> floor  
Wichita, Kansas 67202  
(316)268-4158

(b) Representing the Wrecker Contractor:

Bud Roat Towing  
Attn: Mr. Bud Roat  
310 N Handley  
Wichita, KS 67203  
(316)267-2040

XIV. ***Insurance and Indemnification.***

A. Wrecker Contractor will carry occurrence insurance coverage during the term of this Contract and any extensions thereof in the amounts and manner provided as follows:

1. Comprehensive General Liability covering premises—operations, Broad Form Property Damage and Contractual Liability with minimum limits as follows:

Bodily Injury Liability	\$1,000,000 each occurrence \$1,000,000 each aggregate
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Property Damage Liability	\$1,000,000 each occurrence \$1,000,000 each aggregate
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Or

Bodily Injury and Property Damage Liability (Combined Single Limit)	\$1,000,000 each occurrence \$1,000,000 each aggregate
---------------------------------------------------------------------	-----------------------------------------------------------

2. Automobile Liability - Comprehensive Form including all owned, hired and non-owned vehicles with minimum limits for:

Bodily Injury Liability	\$1,000,000 each accident
Property Damage Liability	\$1,000,000 each accident

Or

Bodily Injury and Property Damage Liability (Combined Single Limit)	\$1,000,000 each accident
------------------------------------------------------------------------	---------------------------

3. Workers' Compensation/Employers Liability for minimum limits of:

Employers Liability	\$100,000 each accident
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4. Coverage shall include garage keeper's insurance as per license requirement.

- B. Wrecker Contractor shall save and hold the City harmless against all suits, claims, damages and losses for injuries to persons or property arising from or caused by errors, omissions or negligent acts of Wrecker Contractor, its officers, agents, servants, or employees, occurring in the performance of its services under this Agreement.

Wrecker Contractor will indemnify the City from all claims, suits, actions and proceedings of every name or description, in law or equity, including defense costs relating to or an account to any injuries or damages received or sustained by any person, firm or corporation as a result of any act or omission of Wrecker Contractor while engaged in any action or providing any service pursuant to this Agreement.

- XV. ***Prohibition Against Assignment and Delegation.*** Notwithstanding any other provision of this Agreement, the Wrecker Contractor warrants that it shall not transfer, pledge, or otherwise assign this Agreement, or any interest therein, or any claim arising there under, to any party or parties, bank, trust, company, or other financing institution. None of the Wrecker Contractor's duties under this Agreement may be delegated to or sub-contracted to any persons other than those described in the successful proposal without the express written permission of the City.
- XVI. ***Third Party Rights.*** It is specifically agreed between the parties that it is not intended by any of the provisions of this Agreement to create in the public or any member thereof a third-party beneficiary hereunder, or to authorize anyone not a party to this Agreement to maintain a suit for damages pursuant to the terms or provisions of this Agreement.
- XVII. ***Compliance with Laws.*** The Wrecker Contractor shall comply with all laws, statutes and ordinances that may pertain to the providing of services under this Agreement.
- XVIII. ***Representative's Authority to Contract.*** By signing this contract, the representative of the **WRECKER CONTRACTOR** represents that he or she is duly authorized by the **WRECKER CONTRACTOR** to execute this contract, and that the **WRECKER CONTRACTOR** has agreed to be bound by all its provisions.



**IN WITNESS WHEREOF**, the parties have set their hands the day and year first above written.

Attest:

City of Wichita, KS

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Karen Sublett  
City Clerk

---

Jeff Longwell  
Mayor

Approved as to Form:

Bud Roat Towing

---

Jennifer Magana  
City Attorney and Director of Law

---

Owner Name

## **EXHIBIT A**

### **REVISED NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION PROGRAM REQUIREMENTS STATEMENT FOR CONTRACTS OR AGREEMENTS**

During the term of this contract, the contractor or subcontractor, Contractor or supplier of the City, by whatever term identified herein, shall comply with the following Non-Discrimination--Equal Employment Opportunity/Affirmative Action Program Requirements:

- A. During the performance of this contract, the contractor, subcontractor, Contractor or supplier of the City, or any of its agencies, shall comply with all the provisions of the Civil Rights Act of 1964, as amended: The Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11131; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and laws, regulations or amendments as may be promulgated thereunder.
- B. Requirements of the State of Kansas:
  - 1. The contractor shall observe the provisions of the Kansas Act against Discrimination (Kansas Statutes Annotated 44-1001, et seq.) and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, and age except where age is a bona fide occupational qualification, national origin or ancestry;
  - 2. In all solicitations or advertisements for employees, the contractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase to be approved by the "Kansas Human Rights Commission";
  - 3. If the contractor fails to comply with the manner in which the contractor reports to the "Kansas Human Rights Commission" in accordance with the provisions of K.S.A. 1976 Supp. 44-1031, as amended, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
  - 4. If the contractor is found guilty of a violation of the Kansas Act against Discrimination under a decision or order of the "Kansas Human Rights Commission" which has become final, the contractor shall be deemed to have breached the present contract, and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

5. The contractor shall include the provisions of Paragraphs 1 through 4 inclusive, of this Subsection B, in every subcontract or purchase so that such provisions will be binding upon such subcontractor or Contractor.
- C. Requirements of the City of Wichita, Kansas, relating to Non-Discrimination -- Equal Employment Opportunity/Affirmative Action Program Requirements:
1. The Contractor, supplier, contractor or subcontractor shall practice Non-Discrimination -- Equal Employment Opportunity in all employment relations, including but not limited to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The contractor, supplier, contractor or subcontractor shall submit an Equal Employment Opportunity or Affirmative Action Program, when required, to the Department of Finance of the City of Wichita, Kansas, in accordance with the guidelines established for review and evaluation;
  2. The Contractor, supplier, contractor or subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, supplier, contractor or subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, "disability, and age except where age is a bona fide occupational qualification", national origin or ancestry. In all solicitations or advertisements for employees the Contractor, supplier, contractor or subcontractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase;
  3. The Contractor, supplier, contractor or subcontractor will furnish all information and reports required by the Department of Finance of said City for the purpose of investigation to ascertain compliance with Non-Discrimination -- Equal Employment Opportunity Requirements. If the Contractor, supplier, contractor, or subcontractor fails to comply with the manner in which he/she or it reports to the City in accordance with the provisions hereof, the Contractor, supplier, contractor or subcontractor shall be deemed to have breached the present contract, purchase order or agreement and it may be canceled, terminated or suspended in whole or in part by the City or its agency; and further Civil Rights complaints, or investigations may be referred to the State;
  4. The Contractor, supplier, contractor or subcontractor shall include the provisions of Subsections 1 through 3 inclusive, of this present section in every subcontract, subpurchase order or subagreement so that such provisions will be binding upon each subcontractor, subcontractor or subsupplier.

5. If the contractor fails to comply with the manner in which the contractor reports to the Department of Finance as stated above, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

D. Exempted from these requirements are:

1. Those contractors, subcontractors, Contractors or suppliers who have less than four (4) employees, whose contracts, purchase orders or agreements cumulatively total less than five thousand dollars (\$5,000) during the fiscal year of said City are exempt from any further Equal Employment Opportunity or Affirmative Action Program submittal.
2. Those Contractors, suppliers, contractors or subcontractors who have already complied with the provisions set forth in this section by reason of holding a contract with the Federal government or contract involving Federal funds; provided that such contractor, subcontractor, Contractor or supplier provides written notification of a compliance review and determination of an acceptable compliance posture within a preceding forty-five (45) day period from the Federal agency involved.

**EXHIBIT B**  
**WRECKER FEES**

No additional charges will be levied against vehicles towed under this Agreement without the written authorization of the Chief of Police or his designee, or at the request of the owner. The following fees shall apply to all Police Impounds. For Light Duty Towing there will be no tow charge that shall exceed \$185 unless the vehicle requires up righting or winching.

1. Light Duty Towing: \$95 hook up fee plus \$4.00 per loaded mile. Additional Charges include: Up righting - \$45; Dolly Service - \$43; Winching - \$25 per one-fourth hour; Waiting Time - \$15 per one-fourth hour;
2. Storage: \$27 per day; heavy duty storage: \$50 per day per unit
3. Tarp Fee: \$15
4. Oil Dry: \$15
5. Lot Fee: \$15
6. Medium/Heavy Duty Towing & Recovery: \$250 per hour portal to portal
7. Heavy Duty Landoll: Specialized Low Boy Transport \$250 per hour portal to portal
8. Clean up that requires loader, bobcats, power brooms, forklifts, and/or extra man power to be added to any tow based on the actual cost plus basis of the service rendered plus 10%.
9. Wichita Police Department Processing Fee for Notices: \$30

Any Police Impound released to the owner of the vehicle will have a maximum storage of forty five (45) days.

**AGREEMENT FOR IMPOUND SERVICES**  
**Wrecker Contractor**

**THIS AGREEMENT** is made between the City of Wichita, Kansas (hereinafter referred to as the City) and **Interstate Wrecker Service, Inc., 1028 N Mosley, Wichita, KS 67214**, Telephone (316)269-1168, (hereinafter referred to as the Wrecker Contractor) on the 1st day of November, 2016.

**WHEREAS**, the City desires to employ the services of the Wrecker Contractor to provide 24/7 full service Impound Towing and Storage. These impound tow services will be for vehicles impounded as directed by the Wichita Police Department pursuant to Section 11.97.010 et seq. of the Code of the City of Wichita. Examples of impounded vehicles are tows from arrests, accidents, and abandoned vehicles. Wrecker Contractor will auction the impounded vehicles as directed by the Wichita Police Department utilizing the auction service selected by Wrecker contractor; and

**WHEREAS**, the **CITY** has solicited a proposal for impound towing, storage, and on-line auction services (Formal Proposal – FP640016; and

**WHEREAS**, the City has sought competitive proposals for this purpose under Proposal No. FP640016, and Wrecker Contractor has submitted the proposal beneficial to the City; and

**WHEREAS**, the Wrecker Contractor is capable of providing the impound towing, storage, and on-line auction services required; and

**WHEREAS** K.S.A. 8-1101 et seq. are the state laws applicable to the towing, removing, storing, sale, and release of vehicles by towing companies. The City and Wrecker Contractor are bound by the provisions of these State Statutes and City Code 11.97.010 et seq. and City Code 3.40 et seq. of the City of Wichita.

**NOW, THEREFORE**, the parties agree as follows:

- I. **Term.** The work under this Agreement shall commence on or about November 1, 2016. The term of this contract shall be from November 1, 2016, through February 28, 2018, with options to renew the contract under the same terms and conditions for four (4) successive one (1) year terms by mutual agreement of the parties. Wrecker Contractor will begin towing impounded vehicles to its own lot on November 1, 2016.
- II. **Services to be Performed by the Wrecker Contractor.** Wrecker Contractor shall provide to the **CITY** those services specified in its response to Formal Proposal Number – FP640016, which are incorporated herein by this reference the same as if it were fully set forth. The request for proposal package, including all specifications and addendums, provided by the City of Wichita as part of the request for proposal letting process for FP640016, shall be considered a part of this contract and is incorporated by reference herein.

a. Agreement

The parties agree that during the terms of this agreement the City of Wichita may establish its own wrecker service that may be included in the S.P.I.D.E.R. rotation list for Police Impound Services. The City of Wichita reserves the right during the renewal term of this agreement to include additional licensed Wrecker Contractors or entities that meet the City Towing Ordinances, and agree to the existing terms of this contract, may be added to the current Wrecker Contractor list in the S.P.I.D.E.R. rotation. Compliance with State and local regulations is the responsibility of the Wrecker Contractor.

Wrecker Contractor will be available twenty-four (24) hours a day, seven (7) days a week, 365 days per year, to respond to calls for service. Wrecker Contractor will respond to police dispatched calls within forty-five (45) minutes of the time the call is received, except in inclement weather.

Wrecker Contractor will completely remove all resulting wreckage, debris, and reasonable amounts of fluids which are dropped or spilled from the site of an accident. Prior to leaving the scene of an accident, Wrecker Contractor will remove any and all other reasonable amounts of substances dropped upon the highway from such vehicle(s), including all broken glass which remains in the street, but excluding truck or vehicle cargos.

Wichita Police Department may direct Wrecker Contractor to tow impound vehicles and all other items without a VIN directly to the City of Wichita, Central Maintenance Facility, 1801 S. McLean, Wichita, KS. Wichita Police Department will pay the cost of the tow to the Wrecker Contractor as per the fee schedule as stated in Exhibit B.

All wreckers will be clearly and permanently marked with the name and address of the licensee on both doors of the vehicle. All wrecker drivers shall wear shirts identifying the licensee's company name. All wreckers will be registered with the Kansas Corporation Commission. Such registration shall remain current during the term of this agreement.

Wrecker Contractor will have a minimum of three (3) tow trucks, all of which will be a minimum 16,000 GVW.

Wrecker Contractor will provide a lot capacity of at least 15,000 square feet. Wrecker Contractor will have a clearly identified space exclusively for Wichita Police Department impounds. Such area does not have to be the entire 15,000 square foot lot size. The properties need to be properly zoned and, if required, have a Conditional Use Permit that would allow the uses that would be able to be used for this agreement.

Wrecker Contractor will maintain an office adjacent to its storage facility to enable legal owners of vehicles to retrieve their vehicles. This office will be open to the public 365 days per year, daily from 7 a.m. to 7 p.m. so that the owners may retrieve their vehicles.

Wrecker Contractor will provide a contact person and telephone number that will be responsible for dealing with the public and the Wichita Police Department staff, along with the handling of any complaints.

Wrecker Contractor will digitally photograph all vehicles prior to impounding the vehicle. A minimum of ten (10) digital photographs shall be taken per vehicle and emailed daily to the Wichita Police Department's Property and Evidence Section. Photographs of the engine/transmission, front of vehicle, right side of vehicle, left side of vehicle, rear of vehicle, keys, contents of front seat, contents of back seat, contents of trunk unless inaccessible, odometer reading if available, and interior (mainly the dash area to capture stereo equipment), and one photograph of the VIN number are mandatory. Such photos will be stored by Wrecker Contractor for sixty (60) days, or until the vehicle is released and the photographs are available for the Wichita Police Property and Evidence staff to view and print.

Wrecker Contractor will accept credit cards or debit cards for payment for the release of Impound vehicles at no additional cost to the owner.

Wrecker Contractor will keep up-to-date with all federal, state and local income, sales and property taxes. Wrecker Contractor will pay, all federal and state withholding taxes when due.

Wrecker Contractor will be a properly organized Kansas Corporation authorized to transact business within the State of Kansas. Wrecker Contractor shall, at all times, remain in good standing with the Kansas Secretary of State.

Wrecker Contractor shall comply with all Kansas Statutes and city ordinances and any subsequent amendments thereto, relative to the towing, removing, or storing of vehicles at the request of the City, and the sale or release of vehicles by the Wrecker Contractor. Failure to comply with these applicable laws shall constitute grounds for termination of the contract.

#### b. Reporting

Wrecker Contractor will be required to furnish the following monthly reports to the Wichita Police Department by the 10<sup>th</sup> day of the following month:

Wrecker Contractor will complete the Wichita Police Department's form that details all charges for each impound tow. Monthly reports will be provided by the Wrecker Contractor of all of the Wichita Police Department's invoiced impound property on hand, detailed billing of each impound tow, to include vehicle information (color, make/model, year, VIN), case number, the purchased price at the on-line auction, and the amount to be paid to the Wichita Police Department. These reports shall be submitted to Wichita Police Department staff by the 10<sup>th</sup> day of the following month. Other reports to facilitate auditing may be requested during this agreement as requested by the Wichita Police Department staff.



Wrecker Contractor will provide electronic daily reports to the Wichita Police Department's Property and Evidence staff, including digital photographs of each towed vehicle. Reports should include the time and date of the tow, location of tow request, time the tow unit is on the scene, time the towed vehicle arrived at the storage facility, total mileage of the tow, tow truck number and driver, the lot the vehicle was towed to, year, make, model, VIN number, and case number if available. Release documents of vehicles returned to owners shall be submitted to the Wichita Police Department within twenty-four (24) hours of the release of the vehicle.

There is a maximum of forty (40) days of storage at twenty seven dollars (\$27) per day that may be charged to vehicles that are released back to the owners.

c. Disposition of Vehicles

The Wichita Police Department will provide the first legal notification to the owner of the impounded vehicle at the City's expense, as required by State Statute. The remaining statutory notifications are the sole responsibility of the Wrecker Contractor. All costs associated with the required subsequent notifications shall be at the sole expense of the Wrecker Contractor. After the required statutory period has passed, Wrecker Contractor will be allowed to auction the vehicle. The disposal of impounded vehicles shall be in compliance pursuant to all of the requirements set forth in K.S.A. 8-1102. Wrecker Contractor will hold the City harmless and indemnify the City from all claims, suits, actions, and proceedings of every name or description as a result the improper sale of any vehicle, or Wrecker Contractor's failure to properly notify the legal owner of the sale as required by law, unless the City illegally or improperly impounded the vehicle.

Wrecker Contractor will utilize their selected auction firm for selling impounded vehicles utilizing an on-line auction services. Wrecker Contractor shall notify the Wichita Police Department within twenty (20) days of execution of this agreement, the Auction Firm they have selected. Wrecker Contractor may not own, or have any ownership interest, in any Auction Firm used by the Wrecker Contractor. The Wichita Police Department must be notified in writing within ten (10) days of any change in the selected Auction Firm. The selected Auction Firm representative will photograph and write a description of each vehicle or equipment to be sold. Vehicles and/or equipment will be sold in the next available auction, after the required thirty (30) day waiting period, or as required in State Statute.

The selected Auction Firm will advertise a Legal Publication of the vehicle(s) and/or equipment sale and send the legal publication affidavit to Wichita Police Department staff prior to the sale date. The Wrecker Contractor will remove and properly dispose of (destroy) the license plates from vehicles prior to the auction date. All publication costs are the sole responsibility of the Wrecker Contractor or its selected Auction Firm.

Wrecker Contractor shall allow potential public auction purchasers the ability to register, bid on impound vehicles and have access to inspect vehicles by appointment only, or a

designated open house, during normal business hours between 8:00 a.m. and 5:00 p.m., Monday through Friday.

Wrecker Contractor shall allow, without the assessment of storage fees, purchasers seven (7) days following the close of an auction to take delivery of a purchased vehicle. On the seventh day, Wrecker Contractor shall notify their selected auction representative, if the vehicle is not picked up by the purchaser. If such vehicle is not picked up within that time frame, Wrecker Contractor may assess storage fees of twenty seven dollars (\$27) per day for each additional day the vehicle remains on the lot, to be paid for by the purchaser. If a vehicle is not picked up within ten (10) days following the close of an auction, Wrecker Contractor may sell the vehicle at the next scheduled auction.

- III. ***Wrecker Fees for Release Vehicles.*** Wrecker Contractor shall assess towing and storage fees in an amount not to exceed those set forth in Exhibit B attached hereto. In addition, Wrecker Contractor agrees to collect a fee of thirty dollars (\$30) per released vehicle for notices, to be processed by the Wichita Police Department. Such fee shall be transmitted to the Wichita Police Department monthly.

IV. ***Conditions of Agreement***

Wichita Police Department reserves the right to have any vehicle returned to the possession of the Department, or its rightful owner, prior to auction, even if the item has already been collected by proposer, if all fees accumulated to date are paid in full. The Wichita Police Department will have the right to any vehicle that is part of a criminal investigation.

Wichita Police Department may conduct regular and unannounced random inspections of the Wrecker Contractor facility twenty-four (24) hours a day, seven (7) days per week, and 365 days per year. Wrecker Contractor will allow the Wichita Police Department to monitor all administrative functions associated with Wichita Police Department vehicles taken into custody by the Wrecker Contractor.

During the performance of this contract, Wrecker Contractor shall retain, all records pertaining to this agreement for a period of three (3) years from the completion of the contract. Such records shall be available to the Wichita Police Department during the Wrecker Contractor's normal working hours.

City reserves the right to conduct an audit of all Wrecker Contractor documents relating to this contract on a regular and unannounced random basis. All files relative to this agreement will be made available during normal working hours.

- V. ***Billing and Payment.*** Impounded vehicles will be sold utilizing the Auction Firm selected by the Wrecker Contractor. The selected Auction Firm will be utilized for the annual term of the contract.

The selected Auction Firm or Wrecker Contractor will remit one hundred and twenty-five dollars (\$125) to the Wichita Police Department per four-wheeled vehicle with an engine

and transmission sold, with the remaining of the auction proceeds to be paid to the Wrecker Contractor for the towing and storage fees of each vehicle. The Wichita Police Department will be paid an amount of one hundred and twenty-five dollars (\$125) for each such impounded vehicle sold by the selected Auction Firm, regardless of the sale price of the impounded vehicle. The selected Auction Firm or Wrecker Contractor will remit fifteen percent (15%) of the gross sale price of all other items sold at auction to the Wichita Police Department. Wrecker Contractor shall provide verification to the Wichita Police Department of all such vehicles or other items that have been approved by Wichita Police Department to be properly destroyed and shall keep any proceeds obtained from the destruction of property. The selected Auction Firm or Wrecker Contractor shall make payment Wichita Police Department for each impound vehicle sold within twenty (20) business days of the sale of the vehicle.

The Auction Firm shall remit detailed auction sale invoices to the Wichita Police Department from each completed auction, detailing the vehicle VIN number, impound case number and sale price to Wichita Police Department. The City will audit and verify the sale of impound vehicles from the payments submitted by the Auction Firm or Wrecker Contractor, as well as the sale price of the sold impound vehicles for reporting purposes.

Any personal property not returned to the owner of the impounded vehicle shall be sold at public auction and Auction Firm will provide an auction report to Wichita Police Department. The Wrecker Contractor shall receive, the auction sale price of such personal property. No proceeds of the sale of personal property shall be required to be transmitted to the Wichita Police Department.

- VI. ***Independent Contractor Status.*** The Wrecker Contractor's status for conduct of tasks described herein shall be as an independent contractor, and not as an agent or employee of the City. Any and all employees or agents of the Wrecker Contractor while engaged in the performance of any work or service required by the Wrecker Contractor under this Agreement shall be considered employees of the Wrecker Contractor only and not of the City. Any and all claims that may arise under the Kansas Workers' Compensation Act on behalf of said employees while so engaged, and any and all claims made by a third party as a consequence of any act or omission on the part of the Wrecker Contractor's employees or agents while so engaged in any of the work or service anticipated herein shall be the sole obligation and responsibility of the Wrecker Contractor.
- VII. ***Acceptance Procedure.*** The Wrecker Contractor shall render the deliverables as described in services to be performed, under the terms and conditions thereof. The City shall have a maximum of thirty (30) days from the delivery completed reports and recommendations within which to respond in writing to such delivery. If the City believes the completed work does not conform to the requirements of the Agreement, it shall notify the Wrecker Contractor in writing thereof, within the above-mentioned thirty (30) days and shall indicate with particularity in what manner the reports fails to conform. In the absence of such notice of non-conformance, acceptance of the work will be presumed.

- VIII. ***Nondiscrimination in Employment.*** During the performance of this Agreement, the Wrecker Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, disability, ancestry or national origin. The City's anti-discrimination requirements, attached as Exhibit A, are made a part of this Agreement by reference.
- IX. ***Termination by the City.*** If, for any cause within the term this Agreement, the Wrecker Contractor shall fail to fulfill its obligations under this Agreement in a timely and proper manner as required by this Agreement, or if the Wrecker Contractor shall violate any of the covenants, agreements, or stipulations of this Agreement, the City shall notify the Wrecker Contractor within ten (10) days of the violation. If the Wrecker Contractor has not remedied the violation within ten (10) days to the City's approval and acceptance, thereupon the City at its discretion shall have the right to terminate this Agreement by giving written notice to the Wrecker Contractor of such termination, effective thirty (30) days following receipt of same, provided, however, that the Wrecker Contractor shall be provided a reasonable time within which to remedy such deficiencies. The Wrecker Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed prior to the effective date of such termination.
- X. ***Termination by the Wrecker Contractor.*** The Wrecker Contractor may terminate this Agreement at any time for failure of the City to comply with any material terms or conditions of this Agreement, effective sixty (60) days following receipt, provided, however, that the City shall be provided a reasonable time within which to remedy such deficiencies. Wrecker Contractor may terminate this Agreement for any reason with one hundred and eighty (180) days written notice to the City.
- XI. ***Governing Law.*** The laws of the State of Kansas shall govern the validity, construction, interpretation, and effect of this Agreement.
- XII. ***Waivers.*** The failure of the parties to enforce, at any time, the provisions of this Agreement or to exercise any option which may be provided herein shall not be construed as a waiver of such provisions or to affect the validity of this Agreement or any part thereof or the right of the parties to enforce thereafter each and every provision and to exercise any such option. No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach. All remedies available under this Agreement shall be taken and construed as cumulative, that is, as being in addition to every other remedy provided by operation of law.

XIII. ***Representatives of Contracting Parties.*** The following designated parties shall represent the parties to this Agreement for notification and communication as may be required:

(a) Representing the City:

Chief of Police or designee  
Wichita Police Department  
455 N. Main 4<sup>th</sup> floor  
Wichita, Kansas 67202  
(316)268-4158

(b) Representing the Wrecker Contractor:

Interstate Wrecker Service, Inc.  
Attn: Mr. Kevin Williams  
1028 N Mosley  
Wichita, KS 67214  
(316)269-1168

XIV. ***Insurance and Indemnification.***

A. Wrecker Contractor will carry occurrence insurance coverage during the term of this Contract and any extensions thereof in the amounts and manner provided as follows:

1. Comprehensive General Liability covering premises—operations, Broad Form Property Damage and Contractual Liability with minimum limits as follows:

Bodily Injury Liability	\$1,000,000 each occurrence \$1,000,000 each aggregate
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Property Damage Liability	\$1,000,000 each occurrence \$1,000,000 each aggregate
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Or

Bodily Injury and Property Damage Liability (Combined Single Limit)	\$1,000,000 each occurrence \$1,000,000 each aggregate
---------------------------------------------------------------------	-----------------------------------------------------------

2. Automobile Liability - Comprehensive Form including all owned, hired and non-owned vehicles with minimum limits for:

Bodily Injury Liability	\$1,000,000 each accident
Property Damage Liability	\$1,000,000 each accident

Or

Bodily Injury and Property Damage Liability (Combined Single Limit)	\$1,000,000 each accident
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3. Workers' Compensation/Employers Liability for minimum limits of:

Employers Liability	\$100,000 each accident
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4. Coverage shall include garage keeper's insurance as per license requirement.

- B. Wrecker Contractor shall save and hold the City harmless against all suits, claims, damages and losses for injuries to persons or property arising from or caused by errors, omissions or negligent acts of Wrecker Contractor, its officers, agents, servants, or employees, occurring in the performance of its services under this Agreement.

Wrecker Contractor will indemnify the City from all claims, suits, actions and proceedings of every name or description, in law or equity, including defense costs relating to or an account to any injuries or damages received or sustained by any person, firm or corporation as a result of any act or omission of Wrecker Contractor while engaged in any action or providing any service pursuant to this Agreement.

- XV. ***Prohibition Against Assignment and Delegation.*** Notwithstanding any other provision of this Agreement, the Wrecker Contractor warrants that it shall not transfer, pledge, or otherwise assign this Agreement, or any interest therein, or any claim arising there under, to any party or parties, bank, trust, company, or other financing institution. None of the Wrecker Contractor's duties under this Agreement may be delegated to or sub-contracted to any persons other than those described in the successful proposal without the express written permission of the City.
- XVI. ***Third Party Rights.*** It is specifically agreed between the parties that it is not intended by any of the provisions of this Agreement to create in the public or any member thereof a third-party beneficiary hereunder, or to authorize anyone not a party to this Agreement to maintain a suit for damages pursuant to the terms or provisions of this Agreement.
- XVII. ***Compliance with Laws.*** The Wrecker Contractor shall comply with all laws, statutes and ordinances that may pertain to the providing of services under this Agreement.
- XVIII. ***Representative's Authority to Contract.*** By signing this contract, the representative of the **WRECKER CONTRACTOR** represents that he or she is duly authorized by the **WRECKER CONTRACTOR** to execute this contract, and that the **WRECKER CONTRACTOR** has agreed to be bound by all its provisions.

**IN WITNESS WHEREOF**, the parties have set their hands the day and year first above written.

Attest:

City of Wichita, KS

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Karen Sublett  
City Clerk

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Jeff Longwell  
Mayor

Approved as to Form:

Interstate Wrecker Service, Inc.

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Jennifer Magana  
City Attorney and Director of Law

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Owner Name

## **EXHIBIT A**

### **REVISED NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION PROGRAM REQUIREMENTS STATEMENT FOR CONTRACTS OR AGREEMENTS**

During the term of this contract, the contractor or subcontractor, Contractor or supplier of the City, by whatever term identified herein, shall comply with the following Non-Discrimination--Equal Employment Opportunity/Affirmative Action Program Requirements:

- A. During the performance of this contract, the contractor, subcontractor, Contractor or supplier of the City, or any of its agencies, shall comply with all the provisions of the Civil Rights Act of 1964, as amended: The Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11131; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and laws, regulations or amendments as may be promulgated thereunder.
- B. Requirements of the State of Kansas:
  - 1. The contractor shall observe the provisions of the Kansas Act against Discrimination (Kansas Statutes Annotated 44-1001, et seq.) and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, and age except where age is a bona fide occupational qualification, national origin or ancestry;
  - 2. In all solicitations or advertisements for employees, the contractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase to be approved by the "Kansas Human Rights Commission";
  - 3. If the contractor fails to comply with the manner in which the contractor reports to the "Kansas Human Rights Commission" in accordance with the provisions of K.S.A. 1976 Supp. 44-1031, as amended, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
  - 4. If the contractor is found guilty of a violation of the Kansas Act against Discrimination under a decision or order of the "Kansas Human Rights Commission" which has become final, the contractor shall be deemed to have breached the present contract, and it may be canceled, terminated or suspended in whole or in part by the contracting agency;



5. The contractor shall include the provisions of Paragraphs 1 through 4 inclusive, of this Subsection B, in every subcontract or purchase so that such provisions will be binding upon such subcontractor or Contractor.
- C. Requirements of the City of Wichita, Kansas, relating to Non-Discrimination -- Equal Employment Opportunity/Affirmative Action Program Requirements:
1. The Contractor, supplier, contractor or subcontractor shall practice Non-Discrimination -- Equal Employment Opportunity in all employment relations, including but not limited to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The contractor, supplier, contractor or subcontractor shall submit an Equal Employment Opportunity or Affirmative Action Program, when required, to the Department of Finance of the City of Wichita, Kansas, in accordance with the guidelines established for review and evaluation;
  2. The Contractor, supplier, contractor or subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, supplier, contractor or subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, "disability, and age except where age is a bona fide occupational qualification", national origin or ancestry. In all solicitations or advertisements for employees the Contractor, supplier, contractor or subcontractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase;
  3. The Contractor, supplier, contractor or subcontractor will furnish all information and reports required by the Department of Finance of said City for the purpose of investigation to ascertain compliance with Non-Discrimination -- Equal Employment Opportunity Requirements. If the Contractor, supplier, contractor, or subcontractor fails to comply with the manner in which he/she or it reports to the City in accordance with the provisions hereof, the Contractor, supplier, contractor or subcontractor shall be deemed to have breached the present contract, purchase order or agreement and it may be canceled, terminated or suspended in whole or in part by the City or its agency; and further Civil Rights complaints, or investigations may be referred to the State;
  4. The Contractor, supplier, contractor or subcontractor shall include the provisions of Subsections 1 through 3 inclusive, of this present section in every subcontract, subpurchase order or subagreement so that such provisions will be binding upon each subcontractor, subcontractor or subsupplier.

5. If the contractor fails to comply with the manner in which the contractor reports to the Department of Finance as stated above, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

D. Exempted from these requirements are:

1. Those contractors, subcontractors, Contractors or suppliers who have less than four (4) employees, whose contracts, purchase orders or agreements cumulatively total less than five thousand dollars (\$5,000) during the fiscal year of said City are exempt from any further Equal Employment Opportunity or Affirmative Action Program submittal.
2. Those Contractors, suppliers, contractors or subcontractors who have already complied with the provisions set forth in this section by reason of holding a contract with the Federal government or contract involving Federal funds; provided that such contractor, subcontractor, Contractor or supplier provides written notification of a compliance review and determination of an acceptable compliance posture within a preceding forty-five (45) day period from the Federal agency involved.

**EXHIBIT B**  
**WRECKER FEES**

No additional charges will be levied against vehicles towed under this Agreement without the written authorization of the Chief of Police or his designee, or at the request of the owner. The following fees shall apply to all Police Impounds. For Light Duty Towing there will be no tow charge that shall exceed \$185 unless the vehicle requires up righting or winching.

1. Light Duty Towing: \$95 hook up fee plus \$4.00 per loaded mile. Additional Charges include: Up righting - \$45; Dolly Service - \$43; Winching - \$25 per one-fourth hour; Waiting Time - \$15 per one-fourth hour;
2. Storage: \$27 per day; heavy duty storage: \$50 per day per unit
3. Tarp Fee: \$15
4. Oil Dry: \$15
5. Lot Fee: \$15
6. Medium/Heavy Duty Towing & Recovery: \$250 per hour portal to portal
7. Heavy Duty Landoll: Specialized Low Boy Transport \$250 per hour portal to portal
8. Clean up that requires loader, bobcats, power brooms, forklifts, and/or extra man power to be added to any tow based on the actual cost plus basis of the service rendered plus 10%.
9. Wichita Police Department Processing Fee for Notices: \$30

Any Police Impound released to the owner of the vehicle will have a maximum storage of forty five (45) days.

**AGREEMENT FOR IMPOUND SERVICES**  
**Wrecker Contractor**

**THIS AGREEMENT** is made between the City of Wichita, Kansas (hereinafter referred to as the City) and **Happy Hooker Towing, Inc., 3760½ S Broadway, Wichita, KS 67216**, Telephone (316)522-8908, (hereinafter referred to as the Wrecker Contractor) on the 1st day of November, 2016.

**WHEREAS**, the City desires to employ the services of the Wrecker Contractor to provide 24/7 full service Impound Towing and Storage. These impound tow services will be for vehicles impounded as directed by the Wichita Police Department pursuant to Section 11.97.010 et seq. of the Code of the City of Wichita. Examples of impounded vehicles are tows from arrests, accidents, and abandoned vehicles. Wrecker Contractor will auction the impounded vehicles as directed by the Wichita Police Department utilizing the auction service selected by Wrecker contractor; and

**WHEREAS**, the **CITY** has solicited a proposal for impound towing, storage, and on-line auction services (Formal Proposal – FP640016; and

**WHEREAS**, the City has sought competitive proposals for this purpose under Proposal No. FP640016, and Wrecker Contractor has submitted the proposal beneficial to the City; and

**WHEREAS**, the Wrecker Contractor is capable of providing the impound towing, storage, and on-line auction services required; and

**WHEREAS** K.S.A. 8-1101 et seq. are the state laws applicable to the towing, removing, storing, sale, and release of vehicles by towing companies. The City and Wrecker Contractor are bound by the provisions of these State Statutes and City Code 11.97.010 et seq. and City Code 3.40 et seq. of the City of Wichita.

**NOW, THEREFORE**, the parties agree as follows:

- I. **Term.** The work under this Agreement shall commence on or about November 1, 2016. The term of this contract shall be from November 1, 2016, through February 28, 2018, with options to renew the contract under the same terms and conditions for four (4) successive one (1) year terms by mutual agreement of the parties. Wrecker Contractor will begin towing impounded vehicles to its own lot on November 1, 2016.
- II. **Services to be Performed by the Wrecker Contractor.** Wrecker Contractor shall provide to the **CITY** those services specified in its response to Formal Proposal Number – FP640016, which are incorporated herein by this reference the same as if it were fully set forth. The request for proposal package, including all specifications and addendums, provided by the City of Wichita as part of the request for proposal letting process for FP640016, shall be considered a part of this contract and is incorporated by reference herein.

a. Agreement

The parties agree that during the terms of this agreement the City of Wichita may establish its own wrecker service that may be included in the S.P.I.D.E.R. rotation list for Police Impound Services. The City of Wichita reserves the right during the renewal term of this agreement to include additional licensed Wrecker Contractors or entities that meet the City Towing Ordinances, and agree to the existing terms of this contract, may be added to the current Wrecker Contractor list in the S.P.I.D.E.R. rotation. Compliance with State and local regulations is the responsibility of the Wrecker Contractor.

Wrecker Contractor will be available twenty-four (24) hours a day, seven (7) days a week, 365 days per year, to respond to calls for service. Wrecker Contractor will respond to police dispatched calls within forty-five (45) minutes of the time the call is received, except in inclement weather.

Wrecker Contractor will completely remove all resulting wreckage, debris, and reasonable amounts of fluids which are dropped or spilled from the site of an accident. Prior to leaving the scene of an accident, Wrecker Contractor will remove any and all other reasonable amounts of substances dropped upon the highway from such vehicle(s), including all broken glass which remains in the street, but excluding truck or vehicle cargos.

Wichita Police Department may direct Wrecker Contractor to tow impound vehicles and all other items without a VIN directly to the City of Wichita, Central Maintenance Facility, 1801 S. McLean, Wichita, KS. Wichita Police Department will pay the cost of the tow to the Wrecker Contractor as per the fee schedule as stated in Exhibit B.

All wreckers will be clearly and permanently marked with the name and address of the licensee on both doors of the vehicle. All wrecker drivers shall wear shirts identifying the licensee's company name. All wreckers will be registered with the Kansas Corporation Commission. Such registration shall remain current during the term of this agreement.

Wrecker Contractor will have a minimum of three (3) tow trucks, all of which will be a minimum 16,000 GVW.

Wrecker Contractor will provide a lot capacity of at least 15,000 square feet. Wrecker Contractor will have a clearly identified space exclusively for Wichita Police Department impounds. Such area does not have to be the entire 15,000 square foot lot size. The properties need to be properly zoned and, if required, have a Conditional Use Permit that would allow the uses that would be able to be used for this agreement.

Wrecker Contractor will maintain an office adjacent to its storage facility to enable legal owners of vehicles to retrieve their vehicles. This office will be open to the public 365 days per year, daily from 7 a.m. to 7 p.m. so that the owners may retrieve their vehicles.

Wrecker Contractor will provide a contact person and telephone number that will be responsible for dealing with the public and the Wichita Police Department staff, along with the handling of any complaints.

Wrecker Contractor will digitally photograph all vehicles prior to impounding the vehicle. A minimum of ten (10) digital photographs shall be taken per vehicle and emailed daily to the Wichita Police Department's Property and Evidence Section. Photographs of the engine/transmission, front of vehicle, right side of vehicle, left side of vehicle, rear of vehicle, keys, contents of front seat, contents of back seat, contents of trunk unless inaccessible, odometer reading if available, and interior (mainly the dash area to capture stereo equipment), and one photograph of the VIN number are mandatory. Such photos will be stored by Wrecker Contractor for sixty (60) days, or until the vehicle is released and the photographs are available for the Wichita Police Property and Evidence staff to view and print.

Wrecker Contractor will accept credit cards or debit cards for payment for the release of Impound vehicles at no additional cost to the owner.

Wrecker Contractor will keep up-to-date with all federal, state and local income, sales and property taxes. Wrecker Contractor will pay, all federal and state withholding taxes when due.

Wrecker Contractor will be a properly organized Kansas Corporation authorized to transact business within the State of Kansas. Wrecker Contractor shall, at all times, remain in good standing with the Kansas Secretary of State.

Wrecker Contractor shall comply with all Kansas Statutes and city ordinances and any subsequent amendments thereto, relative to the towing, removing, or storing of vehicles at the request of the City, and the sale or release of vehicles by the Wrecker Contractor. Failure to comply with these applicable laws shall constitute grounds for termination of the contract.

#### b. Reporting

Wrecker Contractor will be required to furnish the following monthly reports to the Wichita Police Department by the 10<sup>th</sup> day of the following month:

Wrecker Contractor will complete the Wichita Police Department's form that details all charges for each impound tow. Monthly reports will be provided by the Wrecker Contractor of all of the Wichita Police Department's invoiced impound property on hand, detailed billing of each impound tow, to include vehicle information (color, make/model, year, VIN), case number, the purchased price at the on-line auction, and the amount to be paid to the Wichita Police Department. These reports shall be submitted to Wichita Police Department staff by the 10<sup>th</sup> day of the following month. Other reports to facilitate auditing may be requested during this agreement as requested by the Wichita Police Department staff.

Wrecker Contractor will provide electronic daily reports to the Wichita Police Department's Property and Evidence staff, including digital photographs of each towed vehicle. Reports should include the time and date of the tow, location of tow request, time the tow unit is on the scene, time the towed vehicle arrived at the storage facility, total mileage of the tow, tow truck number and driver, the lot the vehicle was towed to, year, make, model, VIN number, and case number if available. Release documents of vehicles returned to owners shall be submitted to the Wichita Police Department within twenty-four (24) hours of the release of the vehicle.

There is a maximum of forty (40) days of storage at twenty seven dollars (\$27) per day that may be charged to vehicles that are released back to the owners.

c. Disposition of Vehicles

The Wichita Police Department will provide the first legal notification to the owner of the impounded vehicle at the City's expense, as required by State Statute. The remaining statutory notifications are the sole responsibility of the Wrecker Contractor. All costs associated with the required subsequent notifications shall be at the sole expense of the Wrecker Contractor. After the required statutory period has passed, Wrecker Contractor will be allowed to auction the vehicle. The disposal of impounded vehicles shall be in compliance pursuant to all of the requirements set forth in K.S.A. 8-1102. Wrecker Contractor will hold the City harmless and indemnify the City from all claims, suits, actions, and proceedings of every name or description as a result the improper sale of any vehicle, or Wrecker Contractor's failure to properly notify the legal owner of the sale as required by law, unless the City illegally or improperly impounded the vehicle.

Wrecker Contractor will utilize their selected auction firm for selling impounded vehicles utilizing an on-line auction services. Wrecker Contractor shall notify the Wichita Police Department within twenty (20) days of execution of this agreement, the Auction Firm they have selected. Wrecker Contractor may not own, or have any ownership interest, in any Auction Firm used by the Wrecker Contractor. The Wichita Police Department must be notified in writing within ten (10) days of any change in the selected Auction Firm. The selected Auction Firm representative will photograph and write a description of each vehicle or equipment to be sold. Vehicles and/or equipment will be sold in the next available auction, after the required thirty (30) day waiting period, or as required in State Statute.

The selected Auction Firm will advertise a Legal Publication of the vehicle(s) and/or equipment sale and send the legal publication affidavit to Wichita Police Department staff prior to the sale date. The Wrecker Contractor will remove and properly dispose of (destroy) the license plates from vehicles prior to the auction date. All publication costs are the sole responsibility of the Wrecker Contractor or its selected Auction Firm.

Wrecker Contractor shall allow potential public auction purchasers the ability to register, bid on impound vehicles and have access to inspect vehicles by appointment only, or a

designated open house, during normal business hours between 8:00 a.m. and 5:00 p.m., Monday through Friday.

Wrecker Contractor shall allow, without the assessment of storage fees, purchasers seven (7) days following the close of an auction to take delivery of a purchased vehicle. On the seventh day, Wrecker Contractor shall notify their selected auction representative, if the vehicle is not picked up by the purchaser. If such vehicle is not picked up within that time frame, Wrecker Contractor may assess storage fees of twenty seven dollars (\$27) per day for each additional day the vehicle remains on the lot, to be paid for by the purchaser. If a vehicle is not picked up within ten (10) days following the close of an auction, Wrecker Contractor may sell the vehicle at the next scheduled auction.

- III. ***Wrecker Fees for Release Vehicles.*** Wrecker Contractor shall assess towing and storage fees in an amount not to exceed those set forth in Exhibit B attached hereto. In addition, Wrecker Contractor agrees to collect a fee of thirty dollars (\$30) per released vehicle for notices, to be processed by the Wichita Police Department. Such fee shall be transmitted to the Wichita Police Department monthly.

IV. ***Conditions of Agreement***

Wichita Police Department reserves the right to have any vehicle returned to the possession of the Department, or its rightful owner, prior to auction, even if the item has already been collected by proposer, if all fees accumulated to date are paid in full. The Wichita Police Department will have the right to any vehicle that is part of a criminal investigation.

Wichita Police Department may conduct regular and unannounced random inspections of the Wrecker Contractor facility twenty-four (24) hours a day, seven (7) days per week, and 365 days per year. Wrecker Contractor will allow the Wichita Police Department to monitor all administrative functions associated with Wichita Police Department vehicles taken into custody by the Wrecker Contractor.

During the performance of this contract, Wrecker Contractor shall retain, all records pertaining to this agreement for a period of three (3) years from the completion of the contract. Such records shall be available to the Wichita Police Department during the Wrecker Contractor's normal working hours.

City reserves the right to conduct an audit of all Wrecker Contractor documents relating to this contract on a regular and unannounced random basis. All files relative to this agreement will be made available during normal working hours.

- V. ***Billing and Payment.*** Impounded vehicles will be sold utilizing the Auction Firm selected by the Wrecker Contractor. The selected Auction Firm will be utilized for the annual term of the contract.

The selected Auction Firm or Wrecker Contractor will remit one hundred and twenty-five dollars (\$125) to the Wichita Police Department per four-wheeled vehicle with an engine



and transmission sold, with the remaining of the auction proceeds to be paid to the Wrecker Contractor for the towing and storage fees of each vehicle. The Wichita Police Department will be paid an amount of one hundred and twenty-five dollars (\$125) for each such impounded vehicle sold by the selected Auction Firm, regardless of the sale price of the impounded vehicle. The selected Auction Firm or Wrecker Contractor will remit fifteen percent (15%) of the gross sale price of all other items sold at auction to the Wichita Police Department. Wrecker Contractor shall provide verification to the Wichita Police Department of all such vehicles or other items that have been approved by Wichita Police Department to be properly destroyed and shall keep any proceeds obtained from the destruction of property. The selected Auction Firm or Wrecker Contractor shall make payment Wichita Police Department for each impound vehicle sold within twenty (20) business days of the sale of the vehicle.

The Auction Firm shall remit detailed auction sale invoices to the Wichita Police Department from each completed auction, detailing the vehicle VIN number, impound case number and sale price to Wichita Police Department. The City will audit and verify the sale of impound vehicles from the payments submitted by the Auction Firm or Wrecker Contractor, as well as the sale price of the sold impound vehicles for reporting purposes.

Any personal property not returned to the owner of the impounded vehicle shall be sold at public auction and Auction Firm will provide an auction report to Wichita Police Department. The Wrecker Contractor shall receive, the auction sale price of such personal property. No proceeds of the sale of personal property shall be required to be transmitted to the Wichita Police Department.

- VI. ***Independent Contractor Status.*** The Wrecker Contractor's status for conduct of tasks described herein shall be as an independent contractor, and not as an agent or employee of the City. Any and all employees or agents of the Wrecker Contractor while engaged in the performance of any work or service required by the Wrecker Contractor under this Agreement shall be considered employees of the Wrecker Contractor only and not of the City. Any and all claims that may arise under the Kansas Workers' Compensation Act on behalf of said employees while so engaged, and any and all claims made by a third party as a consequence of any act or omission on the part of the Wrecker Contractor's employees or agents while so engaged in any of the work or service anticipated herein shall be the sole obligation and responsibility of the Wrecker Contractor.
- VII. ***Acceptance Procedure.*** The Wrecker Contractor shall render the deliverables as described in services to be performed, under the terms and conditions thereof. The City shall have a maximum of thirty (30) days from the delivery completed reports and recommendations within which to respond in writing to such delivery. If the City believes the completed work does not conform to the requirements of the Agreement, it shall notify the Wrecker Contractor in writing thereof, within the above-mentioned thirty (30) days and shall indicate with particularity in what manner the reports fails to conform. In the absence of such notice of non-conformance, acceptance of the work will be presumed.

- VIII. ***Nondiscrimination in Employment.*** During the performance of this Agreement, the Wrecker Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, disability, ancestry or national origin. The City's anti-discrimination requirements, attached as Exhibit A, are made a part of this Agreement by reference.
- IX. ***Termination by the City.*** If, for any cause within the term this Agreement, the Wrecker Contractor shall fail to fulfill its obligations under this Agreement in a timely and proper manner as required by this Agreement, or if the Wrecker Contractor shall violate any of the covenants, agreements, or stipulations of this Agreement, the City shall notify the Wrecker Contractor within ten (10) days of the violation. If the Wrecker Contractor has not remedied the violation within ten (10) days to the City's approval and acceptance, thereupon the City at its discretion shall have the right to terminate this Agreement by giving written notice to the Wrecker Contractor of such termination, effective thirty (30) days following receipt of same, provided, however, that the Wrecker Contractor shall be provided a reasonable time within which to remedy such deficiencies. The Wrecker Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed prior to the effective date of such termination.
- X. ***Termination by the Wrecker Contractor.*** The Wrecker Contractor may terminate this Agreement at any time for failure of the City to comply with any material terms or conditions of this Agreement, effective sixty (60) days following receipt, provided, however, that the City shall be provided a reasonable time within which to remedy such deficiencies. Wrecker Contractor may terminate this Agreement for any reason with one hundred and eighty (180) days written notice to the City.
- XI. ***Governing Law.*** The laws of the State of Kansas shall govern the validity, construction, interpretation, and effect of this Agreement.
- XII. ***Waivers.*** The failure of the parties to enforce, at any time, the provisions of this Agreement or to exercise any option which may be provided herein shall not be construed as a waiver of such provisions or to affect the validity of this Agreement or any part thereof or the right of the parties to enforce thereafter each and every provision and to exercise any such option. No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach. All remedies available under this Agreement shall be taken and construed as cumulative, that is, as being in addition to every other remedy provided by operation of law.

XIII. ***Representatives of Contracting Parties.*** The following designated parties shall represent the parties to this Agreement for notification and communication as may be required:

(a) Representing the City:

Chief of Police or designee  
Wichita Police Department  
455 N. Main 4<sup>th</sup> floor  
Wichita, Kansas 67202  
(316)268-4158

(b) Representing the Wrecker Contractor:

Happy Hooker Towing Inc.  
Attn: Mark Ysidro Jr.  
3760½ S Broadway  
Wichita, KS 67216  
(316)522-8908

XIV. ***Insurance and Indemnification.***

A. Wrecker Contractor will carry occurrence insurance coverage during the term of this Contract and any extensions thereof in the amounts and manner provided as follows:

1. Comprehensive General Liability covering premises—operations, Broad Form Property Damage and Contractual Liability with minimum limits as follows:

Bodily Injury Liability	\$1,000,000 each occurrence \$1,000,000 each aggregate
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Property Damage Liability	\$1,000,000 each occurrence \$1,000,000 each aggregate
---------------------------	-----------------------------------------------------------

Or

Bodily Injury and Property Damage Liability (Combined Single Limit)	\$1,000,000 each occurrence \$1,000,000 each aggregate
---------------------------------------------------------------------	-----------------------------------------------------------

2. Automobile Liability - Comprehensive Form including all owned, hired and non-owned vehicles with minimum limits for:

Bodily Injury Liability	\$1,000,000 each accident
Property Damage Liability	\$1,000,000 each accident

Or

Bodily Injury and Property Damage  
Liability (Combined Single Limit)                      \$1,000,000 each accident

3. Workers' Compensation/Employers Liability for minimum limits of:

Employers Liability                      \$100,000 each accident

4. Coverage shall include garage keeper's insurance as per license requirement.

B. Wrecker Contractor shall save and hold the City harmless against all suits, claims, damages and losses for injuries to persons or property arising from or caused by errors, omissions or negligent acts of Wrecker Contractor, its officers, agents, servants, or employees, occurring in the performance of its services under this Agreement.

Wrecker Contractor will indemnify the City from all claims, suits, actions and proceedings of every name or description, in law or equity, including defense costs relating to or an account to any injuries or damages received or sustained by any person, firm or corporation as a result of any act or omission of Wrecker Contractor while engaged in any action or providing any service pursuant to this Agreement.

XV. ***Prohibition Against Assignment and Delegation.*** Notwithstanding any other provision of this Agreement, the Wrecker Contractor warrants that it shall not transfer, pledge, or otherwise assign this Agreement, or any interest therein, or any claim arising there under, to any party or parties, bank, trust, company, or other financing institution. None of the Wrecker Contractor's duties under this Agreement may be delegated to or sub-contracted to any persons other than those described in the successful proposal without the express written permission of the City.

XVI. ***Third Party Rights.*** It is specifically agreed between the parties that it is not intended by any of the provisions of this Agreement to create in the public or any member thereof a third-party beneficiary hereunder, or to authorize anyone not a party to this Agreement to maintain a suit for damages pursuant to the terms or provisions of this Agreement.

XVII. ***Compliance with Laws.*** The Wrecker Contractor shall comply with all laws, statutes and ordinances that may pertain to the providing of services under this Agreement.

XVIII. ***Representative's Authority to Contract.*** By signing this contract, the representative of the **WRECKER CONTRACTOR** represents that he or she is duly authorized by the **WRECKER CONTRACTOR** to execute this contract, and that the **WRECKER CONTRACTOR** has agreed to be bound by all its provisions.

**IN WITNESS WHEREOF**, the parties have set their hands the day and year first above written.

Attest:

City of Wichita, KS

\_\_\_\_\_  
Karen Sublett  
City Clerk

\_\_\_\_\_  
Jeff Longwell  
Mayor

Approved as to Form:

Happy Hooker Towing Inc.

\_\_\_\_\_  
Jennifer Magana  
City Attorney and Director of Law

\_\_\_\_\_  
Owner Name

## **EXHIBIT A**

### **REVISED NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION PROGRAM REQUIREMENTS STATEMENT FOR CONTRACTS OR AGREEMENTS**

During the term of this contract, the contractor or subcontractor, Contractor or supplier of the City, by whatever term identified herein, shall comply with the following Non-Discrimination--Equal Employment Opportunity/Affirmative Action Program Requirements:

- A. During the performance of this contract, the contractor, subcontractor, Contractor or supplier of the City, or any of its agencies, shall comply with all the provisions of the Civil Rights Act of 1964, as amended: The Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11131; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and laws, regulations or amendments as may be promulgated thereunder.
- B. Requirements of the State of Kansas:
  - 1. The contractor shall observe the provisions of the Kansas Act against Discrimination (Kansas Statutes Annotated 44-1001, et seq.) and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, and age except where age is a bona fide occupational qualification, national origin or ancestry;
  - 2. In all solicitations or advertisements for employees, the contractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase to be approved by the "Kansas Human Rights Commission";
  - 3. If the contractor fails to comply with the manner in which the contractor reports to the "Kansas Human Rights Commission" in accordance with the provisions of K.S.A. 1976 Supp. 44-1031, as amended, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
  - 4. If the contractor is found guilty of a violation of the Kansas Act against Discrimination under a decision or order of the "Kansas Human Rights Commission" which has become final, the contractor shall be deemed to have breached the present contract, and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

5. The contractor shall include the provisions of Paragraphs 1 through 4 inclusive, of this Subsection B, in every subcontract or purchase so that such provisions will be binding upon such subcontractor or Contractor.
- C. Requirements of the City of Wichita, Kansas, relating to Non-Discrimination -- Equal Employment Opportunity/Affirmative Action Program Requirements:
1. The Contractor, supplier, contractor or subcontractor shall practice Non-Discrimination -- Equal Employment Opportunity in all employment relations, including but not limited to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The contractor, supplier, contractor or subcontractor shall submit an Equal Employment Opportunity or Affirmative Action Program, when required, to the Department of Finance of the City of Wichita, Kansas, in accordance with the guidelines established for review and evaluation;
  2. The Contractor, supplier, contractor or subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, supplier, contractor or subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, "disability, and age except where age is a bona fide occupational qualification", national origin or ancestry. In all solicitations or advertisements for employees the Contractor, supplier, contractor or subcontractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase;
  3. The Contractor, supplier, contractor or subcontractor will furnish all information and reports required by the Department of Finance of said City for the purpose of investigation to ascertain compliance with Non-Discrimination -- Equal Employment Opportunity Requirements. If the Contractor, supplier, contractor, or subcontractor fails to comply with the manner in which he/she or it reports to the City in accordance with the provisions hereof, the Contractor, supplier, contractor or subcontractor shall be deemed to have breached the present contract, purchase order or agreement and it may be canceled, terminated or suspended in whole or in part by the City or its agency; and further Civil Rights complaints, or investigations may be referred to the State;
  4. The Contractor, supplier, contractor or subcontractor shall include the provisions of Subsections 1 through 3 inclusive, of this present section in every subcontract, subpurchase order or subagreement so that such provisions will be binding upon each subcontractor, subcontractor or subsupplier.

5. If the contractor fails to comply with the manner in which the contractor reports to the Department of Finance as stated above, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

D. Exempted from these requirements are:

1. Those contractors, subcontractors, Contractors or suppliers who have less than four (4) employees, whose contracts, purchase orders or agreements cumulatively total less than five thousand dollars (\$5,000) during the fiscal year of said City are exempt from any further Equal Employment Opportunity or Affirmative Action Program submittal.
2. Those Contractors, suppliers, contractors or subcontractors who have already complied with the provisions set forth in this section by reason of holding a contract with the Federal government or contract involving Federal funds; provided that such contractor, subcontractor, Contractor or supplier provides written notification of a compliance review and determination of an acceptable compliance posture within a preceding forty-five (45) day period from the Federal agency involved.



**EXHIBIT B**  
**WRECKER FEES**

No additional charges will be levied against vehicles towed under this Agreement without the written authorization of the Chief of Police or his designee, or at the request of the owner. The following fees shall apply to all Police Impounds. For Light Duty Towing there will be no tow charge that shall exceed \$185 unless the vehicle requires up righting or winching.

1. Light Duty Towing: \$95 hook up fee plus \$4.00 per loaded mile. Additional Charges include: Up righting - \$45; Dolly Service - \$43; Winching - \$25 per one-fourth hour; Waiting Time - \$15 per one-fourth hour;
2. Storage: \$27 per day; heavy duty storage: \$50 per day per unit
3. Tarp Fee: \$15
4. Oil Dry: \$15
5. Lot Fee: \$15
6. Medium/Heavy Duty Towing & Recovery: \$250 per hour portal to portal
7. Heavy Duty Landoll: Specialized Low Boy Transport \$250 per hour portal to portal
8. Clean up that requires loader, bobcats, power brooms, forklifts, and/or extra man power to be added to any tow based on the actual cost plus basis of the service rendered plus 10%.
9. Wichita Police Department Processing Fee for Notices: \$30

Any Police Impound released to the owner of the vehicle will have a maximum storage of forty five (45) days.

**AGREEMENT FOR IMPOUND SERVICES**  
**Wrecker Contractor**

**THIS AGREEMENT** is made between the City of Wichita, Kansas (hereinafter referred to as the City) and **Ken's Auto Tow, Inc., 3760 S Broadway, Wichita, KS 67216**, Telephone (316)941-4300, (hereinafter referred to as the Wrecker Contractor) on the 1st day of November, 2016.

**WHEREAS**, the City desires to employ the services of the Wrecker Contractor to provide 24/7 full service Impound Towing and Storage. These impound tow services will be for vehicles impounded as directed by the Wichita Police Department pursuant to Section 11.97.010 et seq. of the Code of the City of Wichita. Examples of impounded vehicles are tows from arrests, accidents, and abandoned vehicles. Wrecker Contractor will auction the impounded vehicles as directed by the Wichita Police Department utilizing the auction service selected by Wrecker contractor; and

**WHEREAS**, the **CITY** has solicited a proposal for impound towing, storage, and on-line auction services (Formal Proposal – FP640016; and

**WHEREAS**, the City has sought competitive proposals for this purpose under Proposal No. FP640016, and Wrecker Contractor has submitted the proposal beneficial to the City; and

**WHEREAS**, the Wrecker Contractor is capable of providing the impound towing, storage, and on-line auction services required; and

**WHEREAS** K.S.A. 8-1101 et seq. are the state laws applicable to the towing, removing, storing, sale, and release of vehicles by towing companies. The City and Wrecker Contractor are bound by the provisions of these State Statutes and City Code 11.97.010 et seq. and City Code 3.40 et seq. of the City of Wichita.

**NOW, THEREFORE**, the parties agree as follows:

- I. **Term.** The work under this Agreement shall commence on or about November 1, 2016. The term of this contract shall be from November 1, 2016, through February 28, 2018, with options to renew the contract under the same terms and conditions for four (4) successive one (1) year terms by mutual agreement of the parties. Wrecker Contractor will begin towing impounded vehicles to its own lot on November 1, 2016.
- II. **Services to be Performed by the Wrecker Contractor.** Wrecker Contractor shall provide to the **CITY** those services specified in its response to Formal Proposal Number – FP640016, which are incorporated herein by this reference the same as if it were fully set forth. The request for proposal package, including all specifications and addendums, provided by the City of Wichita as part of the request for proposal letting process for FP640016, shall be considered a part of this contract and is incorporated by reference herein.

a. Agreement

The parties agree that during the terms of this agreement the City of Wichita may establish its own wrecker service that may be included in the S.P.I.D.E.R. rotation list for Police Impound Services. The City of Wichita reserves the right during the renewal term of this agreement to include additional licensed Wrecker Contractors or entities that meet the City Towing Ordinances, and agree to the existing terms of this contract, may be added to the current Wrecker Contractor list in the S.P.I.D.E.R. rotation. Compliance with State and local regulations is the responsibility of the Wrecker Contractor.

Wrecker Contractor will be available twenty-four (24) hours a day, seven (7) days a week, 365 days per year, to respond to calls for service. Wrecker Contractor will respond to police dispatched calls within forty-five (45) minutes of the time the call is received, except in inclement weather.

Wrecker Contractor will completely remove all resulting wreckage, debris, and reasonable amounts of fluids which are dropped or spilled from the site of an accident. Prior to leaving the scene of an accident, Wrecker Contractor will remove any and all other reasonable amounts of substances dropped upon the highway from such vehicle(s), including all broken glass which remains in the street, but excluding truck or vehicle cargos.

Wichita Police Department may direct Wrecker Contractor to tow impound vehicles and all other items without a VIN directly to the City of Wichita, Central Maintenance Facility, 1801 S. McLean, Wichita, KS. Wichita Police Department will pay the cost of the tow to the Wrecker Contractor as per the fee schedule as stated in Exhibit B.

All wreckers will be clearly and permanently marked with the name and address of the licensee on both doors of the vehicle. All wrecker drivers shall wear shirts identifying the licensee's company name. All wreckers will be registered with the Kansas Corporation Commission. Such registration shall remain current during the term of this agreement.

Wrecker Contractor will have a minimum of three (3) tow trucks, all of which will be a minimum 16,000 GVW.

Wrecker Contractor will provide a lot capacity of at least 15,000 square feet. Wrecker Contractor will have a clearly identified space exclusively for Wichita Police Department impounds. Such area does not have to be the entire 15,000 square foot lot size. The properties need to be properly zoned and, if required, have a Conditional Use Permit that would allow the uses that would be able to be used for this agreement.

Wrecker Contractor will maintain an office adjacent to its storage facility to enable legal owners of vehicles to retrieve their vehicles. This office will be open to the public 365 days per year, daily from 7 a.m. to 7 p.m. so that the owners may retrieve their vehicles.

Wrecker Contractor will provide a contact person and telephone number that will be responsible for dealing with the public and the Wichita Police Department staff, along with the handling of any complaints.

Wrecker Contractor will digitally photograph all vehicles prior to impounding the vehicle. A minimum of ten (10) digital photographs shall be taken per vehicle and emailed daily to the Wichita Police Department's Property and Evidence Section. Photographs of the engine/transmission, front of vehicle, right side of vehicle, left side of vehicle, rear of vehicle, keys, contents of front seat, contents of back seat, contents of trunk unless inaccessible, odometer reading if available, and interior (mainly the dash area to capture stereo equipment), and one photograph of the VIN number are mandatory. Such photos will be stored by Wrecker Contractor for sixty (60) days, or until the vehicle is released and the photographs are available for the Wichita Police Property and Evidence staff to view and print.

Wrecker Contractor will accept credit cards or debit cards for payment for the release of Impound vehicles at no additional cost to the owner.

Wrecker Contractor will keep up-to-date with all federal, state and local income, sales and property taxes. Wrecker Contractor will pay, all federal and state withholding taxes when due.

Wrecker Contractor will be a properly organized Kansas Corporation authorized to transact business within the State of Kansas. Wrecker Contractor shall, at all times, remain in good standing with the Kansas Secretary of State.

Wrecker Contractor shall comply with all Kansas Statutes and city ordinances and any subsequent amendments thereto, relative to the towing, removing, or storing of vehicles at the request of the City, and the sale or release of vehicles by the Wrecker Contractor. Failure to comply with these applicable laws shall constitute grounds for termination of the contract.

#### b. Reporting

Wrecker Contractor will be required to furnish the following monthly reports to the Wichita Police Department by the 10<sup>th</sup> day of the following month:

Wrecker Contractor will complete the Wichita Police Department's form that details all charges for each impound tow. Monthly reports will be provided by the Wrecker Contractor of all of the Wichita Police Department's invoiced impound property on hand, detailed billing of each impound tow, to include vehicle information (color, make/model, year, VIN), case number, the purchased price at the on-line auction, and the amount to be paid to the Wichita Police Department. These reports shall be submitted to Wichita Police Department staff by the 10<sup>th</sup> day of the following month. Other reports to facilitate auditing may be requested during this agreement as requested by the Wichita Police Department staff.

Wrecker Contractor will provide electronic daily reports to the Wichita Police Department's Property and Evidence staff, including digital photographs of each towed vehicle. Reports should include the time and date of the tow, location of tow request, time the tow unit is on the scene, time the towed vehicle arrived at the storage facility, total mileage of the tow, tow truck number and driver, the lot the vehicle was towed to, year, make, model, VIN number, and case number if available. Release documents of vehicles returned to owners shall be submitted to the Wichita Police Department within twenty-four (24) hours of the release of the vehicle.

There is a maximum of forty (40) days of storage at twenty seven dollars (\$27) per day that may be charged to vehicles that are released back to the owners.

c. Disposition of Vehicles

The Wichita Police Department will provide the first legal notification to the owner of the impounded vehicle at the City's expense, as required by State Statute. The remaining statutory notifications are the sole responsibility of the Wrecker Contractor. All costs associated with the required subsequent notifications shall be at the sole expense of the Wrecker Contractor. After the required statutory period has passed, Wrecker Contractor will be allowed to auction the vehicle. The disposal of impounded vehicles shall be in compliance pursuant to all of the requirements set forth in K.S.A. 8-1102. Wrecker Contractor will hold the City harmless and indemnify the City from all claims, suits, actions, and proceedings of every name or description as a result the improper sale of any vehicle, or Wrecker Contractor's failure to properly notify the legal owner of the sale as required by law, unless the City illegally or improperly impounded the vehicle.

Wrecker Contractor will utilize their selected auction firm for selling impounded vehicles utilizing an on-line auction services. Wrecker Contractor shall notify the Wichita Police Department within twenty (20) days of execution of this agreement, the Auction Firm they have selected. Wrecker Contractor may not own, or have any ownership interest, in any Auction Firm used by the Wrecker Contractor. The Wichita Police Department must be notified in writing within ten (10) days of any change in the selected Auction Firm. The selected Auction Firm representative will photograph and write a description of each vehicle or equipment to be sold. Vehicles and/or equipment will be sold in the next available auction, after the required thirty (30) day waiting period, or as required in State Statute.

The selected Auction Firm will advertise a Legal Publication of the vehicle(s) and/or equipment sale and send the legal publication affidavit to Wichita Police Department staff prior to the sale date. The Wrecker Contractor will remove and properly dispose of (destroy) the license plates from vehicles prior to the auction date. All publication costs are the sole responsibility of the Wrecker Contractor or its selected Auction Firm.

Wrecker Contractor shall allow potential public auction purchasers the ability to register, bid on impound vehicles and have access to inspect vehicles by appointment only, or a

designated open house, during normal business hours between 8:00 a.m. and 5:00 p.m., Monday through Friday.

Wrecker Contractor shall allow, without the assessment of storage fees, purchasers seven (7) days following the close of an auction to take delivery of a purchased vehicle. On the seventh day, Wrecker Contractor shall notify their selected auction representative, if the vehicle is not picked up by the purchaser. If such vehicle is not picked up within that time frame, Wrecker Contractor may assess storage fees of twenty seven dollars (\$27) per day for each additional day the vehicle remains on the lot, to be paid for by the purchaser. If a vehicle is not picked up within ten (10) days following the close of an auction, Wrecker Contractor may sell the vehicle at the next scheduled auction.

- III. ***Wrecker Fees for Release Vehicles.*** Wrecker Contractor shall assess towing and storage fees in an amount not to exceed those set forth in Exhibit B attached hereto. In addition, Wrecker Contractor agrees to collect a fee of thirty dollars (\$30) per released vehicle for notices, to be processed by the Wichita Police Department. Such fee shall be transmitted to the Wichita Police Department monthly.

IV. ***Conditions of Agreement***

Wichita Police Department reserves the right to have any vehicle returned to the possession of the Department, or its rightful owner, prior to auction, even if the item has already been collected by proposer, if all fees accumulated to date are paid in full. The Wichita Police Department will have the right to any vehicle that is part of a criminal investigation.

Wichita Police Department may conduct regular and unannounced random inspections of the Wrecker Contractor facility twenty-four (24) hours a day, seven (7) days per week, and 365 days per year. Wrecker Contractor will allow the Wichita Police Department to monitor all administrative functions associated with Wichita Police Department vehicles taken into custody by the Wrecker Contractor.

During the performance of this contract, Wrecker Contractor shall retain, all records pertaining to this agreement for a period of three (3) years from the completion of the contract. Such records shall be available to the Wichita Police Department during the Wrecker Contractor's normal working hours.

City reserves the right to conduct an audit of all Wrecker Contractor documents relating to this contract on a regular and unannounced random basis. All files relative to this agreement will be made available during normal working hours.

- V. ***Billing and Payment.*** Impounded vehicles will be sold utilizing the Auction Firm selected by the Wrecker Contractor. The selected Auction Firm will be utilized for the annual term of the contract.

The selected Auction Firm or Wrecker Contractor will remit one hundred and twenty-five dollars (\$125) to the Wichita Police Department per four-wheeled vehicle with an engine

and transmission sold, with the remaining of the auction proceeds to be paid to the Wrecker Contractor for the towing and storage fees of each vehicle. The Wichita Police Department will be paid an amount of one hundred and twenty-five dollars (\$125) for each such impounded vehicle sold by the selected Auction Firm, regardless of the sale price of the impounded vehicle. The selected Auction Firm or Wrecker Contractor will remit fifteen percent (15%) of the gross sale price of all other items sold at auction to the Wichita Police Department. Wrecker Contractor shall provide verification to the Wichita Police Department of all such vehicles or other items that have been approved by Wichita Police Department to be properly destroyed and shall keep any proceeds obtained from the destruction of property. The selected Auction Firm or Wrecker Contractor shall make payment Wichita Police Department for each impound vehicle sold within twenty (20) business days of the sale of the vehicle.

The Auction Firm shall remit detailed auction sale invoices to the Wichita Police Department from each completed auction, detailing the vehicle VIN number, impound case number and sale price to Wichita Police Department. The City will audit and verify the sale of impound vehicles from the payments submitted by the Auction Firm or Wrecker Contractor, as well as the sale price of the sold impound vehicles for reporting purposes.

Any personal property not returned to the owner of the impounded vehicle shall be sold at public auction and Auction Firm will provide an auction report to Wichita Police Department. The Wrecker Contractor shall receive, the auction sale price of such personal property. No proceeds of the sale of personal property shall be required to be transmitted to the Wichita Police Department.

- VI. ***Independent Contractor Status.*** The Wrecker Contractor's status for conduct of tasks described herein shall be as an independent contractor, and not as an agent or employee of the City. Any and all employees or agents of the Wrecker Contractor while engaged in the performance of any work or service required by the Wrecker Contractor under this Agreement shall be considered employees of the Wrecker Contractor only and not of the City. Any and all claims that may arise under the Kansas Workers' Compensation Act on behalf of said employees while so engaged, and any and all claims made by a third party as a consequence of any act or omission on the part of the Wrecker Contractor's employees or agents while so engaged in any of the work or service anticipated herein shall be the sole obligation and responsibility of the Wrecker Contractor.
- VII. ***Acceptance Procedure.*** The Wrecker Contractor shall render the deliverables as described in services to be performed, under the terms and conditions thereof. The City shall have a maximum of thirty (30) days from the delivery completed reports and recommendations within which to respond in writing to such delivery. If the City believes the completed work does not conform to the requirements of the Agreement, it shall notify the Wrecker Contractor in writing thereof, within the above-mentioned thirty (30) days and shall indicate with particularity in what manner the reports fails to conform. In the absence of such notice of non-conformance, acceptance of the work will be presumed.

- VIII. ***Nondiscrimination in Employment.*** During the performance of this Agreement, the Wrecker Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, disability, ancestry or national origin. The City's anti-discrimination requirements, attached as Exhibit A, are made a part of this Agreement by reference.
- IX. ***Termination by the City.*** If, for any cause within the term this Agreement, the Wrecker Contractor shall fail to fulfill its obligations under this Agreement in a timely and proper manner as required by this Agreement, or if the Wrecker Contractor shall violate any of the covenants, agreements, or stipulations of this Agreement, the City shall notify the Wrecker Contractor within ten (10) days of the violation. If the Wrecker Contractor has not remedied the violation within ten (10) days to the City's approval and acceptance, thereupon the City at its discretion shall have the right to terminate this Agreement by giving written notice to the Wrecker Contractor of such termination, effective thirty (30) days following receipt of same, provided, however, that the Wrecker Contractor shall be provided a reasonable time within which to remedy such deficiencies. The Wrecker Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed prior to the effective date of such termination.
- X. ***Termination by the Wrecker Contractor.*** The Wrecker Contractor may terminate this Agreement at any time for failure of the City to comply with any material terms or conditions of this Agreement, effective sixty (60) days following receipt, provided, however, that the City shall be provided a reasonable time within which to remedy such deficiencies. Wrecker Contractor may terminate this Agreement for any reason with one hundred and eighty (180) days written notice to the City.
- XI. ***Governing Law.*** The laws of the State of Kansas shall govern the validity, construction, interpretation, and effect of this Agreement.
- XII. ***Waivers.*** The failure of the parties to enforce, at any time, the provisions of this Agreement or to exercise any option which may be provided herein shall not be construed as a waiver of such provisions or to affect the validity of this Agreement or any part thereof or the right of the parties to enforce thereafter each and every provision and to exercise any such option. No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach. All remedies available under this Agreement shall be taken and construed as cumulative, that is, as being in addition to every other remedy provided by operation of law.



XIII. ***Representatives of Contracting Parties.*** The following designated parties shall represent the parties to this Agreement for notification and communication as may be required:

(a) Representing the City:

Chief of Police or designee  
Wichita Police Department  
455 N. Main 4<sup>th</sup> floor  
Wichita, Kansas 67202  
(316)268-4158

(b) Representing the Wrecker Contractor:

Ken's Auto Tow, Inc.  
Attn: Mr. Monte Ysidro  
3760 S Broadway  
Wichita, KS 67216  
(316)941-4300

XIV. ***Insurance and Indemnification.***

A. Wrecker Contractor will carry occurrence insurance coverage during the term of this Contract and any extensions thereof in the amounts and manner provided as follows:

1. Comprehensive General Liability covering premises—operations, Broad Form Property Damage and Contractual Liability with minimum limits as follows:

Bodily Injury Liability	\$1,000,000 each occurrence \$1,000,000 each aggregate
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Property Damage Liability	\$1,000,000 each occurrence \$1,000,000 each aggregate
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Or

Bodily Injury and Property Damage Liability (Combined Single Limit)	\$1,000,000 each occurrence \$1,000,000 each aggregate
---------------------------------------------------------------------	-----------------------------------------------------------

2. Automobile Liability - Comprehensive Form including all owned, hired and non-owned vehicles with minimum limits for:

Bodily Injury Liability	\$1,000,000 each accident
Property Damage Liability	\$1,000,000 each accident

Or

Bodily Injury and Property Damage Liability (Combined Single Limit)	\$1,000,000 each accident
------------------------------------------------------------------------	---------------------------

3. Workers' Compensation/Employers Liability for minimum limits of:

Employers Liability	\$100,000 each accident
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4. Coverage shall include garage keeper's insurance as per license requirement.

- B. Wrecker Contractor shall save and hold the City harmless against all suits, claims, damages and losses for injuries to persons or property arising from or caused by errors, omissions or negligent acts of Wrecker Contractor, its officers, agents, servants, or employees, occurring in the performance of its services under this Agreement.

Wrecker Contractor will indemnify the City from all claims, suits, actions and proceedings of every name or description, in law or equity, including defense costs relating to or an account to any injuries or damages received or sustained by any person, firm or corporation as a result of any act or omission of Wrecker Contractor while engaged in any action or providing any service pursuant to this Agreement.

- XV. ***Prohibition Against Assignment and Delegation.*** Notwithstanding any other provision of this Agreement, the Wrecker Contractor warrants that it shall not transfer, pledge, or otherwise assign this Agreement, or any interest therein, or any claim arising there under, to any party or parties, bank, trust, company, or other financing institution. None of the Wrecker Contractor's duties under this Agreement may be delegated to or sub-contracted to any persons other than those described in the successful proposal without the express written permission of the City.
- XVI. ***Third Party Rights.*** It is specifically agreed between the parties that it is not intended by any of the provisions of this Agreement to create in the public or any member thereof a third-party beneficiary hereunder, or to authorize anyone not a party to this Agreement to maintain a suit for damages pursuant to the terms or provisions of this Agreement.
- XVII. ***Compliance with Laws.*** The Wrecker Contractor shall comply with all laws, statutes and ordinances that may pertain to the providing of services under this Agreement.
- XVIII. ***Representative's Authority to Contract.*** By signing this contract, the representative of the **WRECKER CONTRACTOR** represents that he or she is duly authorized by the **WRECKER CONTRACTOR** to execute this contract, and that the **WRECKER CONTRACTOR** has agreed to be bound by all its provisions.

**IN WITNESS WHEREOF**, the parties have set their hands the day and year first above written.

Attest:

City of Wichita, KS

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Karen Sublett  
City Clerk

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Jeff Longwell  
Mayor

Approved as to Form:

Ken's Auto Tow, Inc.

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Jennifer Magana  
City Attorney and Director of Law

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Owner Name

## **EXHIBIT A**

### **REVISED NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION PROGRAM REQUIREMENTS STATEMENT FOR CONTRACTS OR AGREEMENTS**

During the term of this contract, the contractor or subcontractor, Contractor or supplier of the City, by whatever term identified herein, shall comply with the following Non-Discrimination--Equal Employment Opportunity/Affirmative Action Program Requirements:

- A. During the performance of this contract, the contractor, subcontractor, Contractor or supplier of the City, or any of its agencies, shall comply with all the provisions of the Civil Rights Act of 1964, as amended: The Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11131; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and laws, regulations or amendments as may be promulgated thereunder.
- B. Requirements of the State of Kansas:
  - 1. The contractor shall observe the provisions of the Kansas Act against Discrimination (Kansas Statutes Annotated 44-1001, et seq.) and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, and age except where age is a bona fide occupational qualification, national origin or ancestry;
  - 2. In all solicitations or advertisements for employees, the contractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase to be approved by the "Kansas Human Rights Commission";
  - 3. If the contractor fails to comply with the manner in which the contractor reports to the "Kansas Human Rights Commission" in accordance with the provisions of K.S.A. 1976 Supp. 44-1031, as amended, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
  - 4. If the contractor is found guilty of a violation of the Kansas Act against Discrimination under a decision or order of the "Kansas Human Rights Commission" which has become final, the contractor shall be deemed to have breached the present contract, and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

5. The contractor shall include the provisions of Paragraphs 1 through 4 inclusive, of this Subsection B, in every subcontract or purchase so that such provisions will be binding upon such subcontractor or Contractor.
- C. Requirements of the City of Wichita, Kansas, relating to Non-Discrimination -- Equal Employment Opportunity/Affirmative Action Program Requirements:
1. The Contractor, supplier, contractor or subcontractor shall practice Non-Discrimination -- Equal Employment Opportunity in all employment relations, including but not limited to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The contractor, supplier, contractor or subcontractor shall submit an Equal Employment Opportunity or Affirmative Action Program, when required, to the Department of Finance of the City of Wichita, Kansas, in accordance with the guidelines established for review and evaluation;
  2. The Contractor, supplier, contractor or subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, supplier, contractor or subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, "disability, and age except where age is a bona fide occupational qualification", national origin or ancestry. In all solicitations or advertisements for employees the Contractor, supplier, contractor or subcontractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase;
  3. The Contractor, supplier, contractor or subcontractor will furnish all information and reports required by the Department of Finance of said City for the purpose of investigation to ascertain compliance with Non-Discrimination -- Equal Employment Opportunity Requirements. If the Contractor, supplier, contractor, or subcontractor fails to comply with the manner in which he/she or it reports to the City in accordance with the provisions hereof, the Contractor, supplier, contractor or subcontractor shall be deemed to have breached the present contract, purchase order or agreement and it may be canceled, terminated or suspended in whole or in part by the City or its agency; and further Civil Rights complaints, or investigations may be referred to the State;
  4. The Contractor, supplier, contractor or subcontractor shall include the provisions of Subsections 1 through 3 inclusive, of this present section in every subcontract, subpurchase order or subagreement so that such provisions will be binding upon each subcontractor, subcontractor or subsupplier.

5. If the contractor fails to comply with the manner in which the contractor reports to the Department of Finance as stated above, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

D. Exempted from these requirements are:

1. Those contractors, subcontractors, Contractors or suppliers who have less than four (4) employees, whose contracts, purchase orders or agreements cumulatively total less than five thousand dollars (\$5,000) during the fiscal year of said City are exempt from any further Equal Employment Opportunity or Affirmative Action Program submittal.
2. Those Contractors, suppliers, contractors or subcontractors who have already complied with the provisions set forth in this section by reason of holding a contract with the Federal government or contract involving Federal funds; provided that such contractor, subcontractor, Contractor or supplier provides written notification of a compliance review and determination of an acceptable compliance posture within a preceding forty-five (45) day period from the Federal agency involved.

**EXHIBIT B**  
**WRECKER FEES**

No additional charges will be levied against vehicles towed under this Agreement without the written authorization of the Chief of Police or his designee, or at the request of the owner. The following fees shall apply to all Police Impounds. For Light Duty Towing there will be no tow charge that shall exceed \$185 unless the vehicle requires up righting or winching.

1. Light Duty Towing: \$95 hook up fee plus \$4.00 per loaded mile. Additional Charges include: Up righting - \$45; Dolly Service - \$43; Winching - \$25 per one-fourth hour; Waiting Time - \$15 per one-fourth hour;
2. Storage: \$27 per day; heavy duty storage: \$50 per day per unit
3. Tarp Fee: \$15
4. Oil Dry: \$15
5. Lot Fee: \$15
6. Medium/Heavy Duty Towing & Recovery: \$250 per hour portal to portal
7. Heavy Duty Landoll: Specialized Low Boy Transport \$250 per hour portal to portal
8. Clean up that requires loader, bobcats, power brooms, forklifts, and/or extra man power to be added to any tow based on the actual cost plus basis of the service rendered plus 10%.
9. Wichita Police Department Processing Fee for Notices: \$30

Any Police Impound released to the owner of the vehicle will have a maximum storage of forty five (45) days.

**AGREEMENT FOR IMPOUND SERVICES**  
**Wrecker Contractor**

**THIS AGREEMENT** is made between the City of Wichita, Kansas (hereinafter referred to as the City) and **Kidd's Towing and Recovery, LLC, 4740 W Esthner, Wichita, KS 67209**, Telephone (316)945-8697, (hereinafter referred to as the Wrecker Contractor) on the 1st day of November, 2016.

**WHEREAS**, the City desires to employ the services of the Wrecker Contractor to provide 24/7 full service Impound Towing and Storage. These impound tow services will be for vehicles impounded as directed by the Wichita Police Department pursuant to Section 11.97.010 et seq. of the Code of the City of Wichita. Examples of impounded vehicles are tows from arrests, accidents, and abandoned vehicles. Wrecker Contractor will auction the impounded vehicles as directed by the Wichita Police Department utilizing the auction service selected by Wrecker contractor; and

**WHEREAS**, the **CITY** has solicited a proposal for impound towing, storage, and on-line auction services (Formal Proposal – FP640016; and

**WHEREAS**, the City has sought competitive proposals for this purpose under Proposal No. FP640016, and Wrecker Contractor has submitted the proposal beneficial to the City; and

**WHEREAS**, the Wrecker Contractor is capable of providing the impound towing, storage, and on-line auction services required; and

**WHEREAS** K.S.A. 8-1101 et seq. are the state laws applicable to the towing, removing, storing, sale, and release of vehicles by towing companies. The City and Wrecker Contractor are bound by the provisions of these State Statutes and City Code 11.97.010 et seq. and City Code 3.40 et seq. of the City of Wichita.

**NOW, THEREFORE**, the parties agree as follows:

- I. **Term.** The work under this Agreement shall commence on or about November 1, 2016. The term of this contract shall be from November 1, 2016, through February 28, 2018, with options to renew the contract under the same terms and conditions for four (4) successive one (1) year terms by mutual agreement of the parties. Wrecker Contractor will begin towing impounded vehicles to its own lot on November 1, 2016.
- II. **Services to be Performed by the Wrecker Contractor.** Wrecker Contractor shall provide to the **CITY** those services specified in its response to Formal Proposal Number – FP640016, which are incorporated herein by this reference the same as if it were fully set forth. The request for proposal package, including all specifications and addendums, provided by the City of Wichita as part of the request for proposal letting process for FP640016, shall be considered a part of this contract and is incorporated by reference herein.



a. Agreement

The parties agree that during the terms of this agreement the City of Wichita may establish its own wrecker service that may be included in the S.P.I.D.E.R. rotation list for Police Impound Services. The City of Wichita reserves the right during the renewal term of this agreement to include additional licensed Wrecker Contractors or entities that meet the City Towing Ordinances, and agree to the existing terms of this contract, may be added to the current Wrecker Contractor list in the S.P.I.D.E.R. rotation. Compliance with State and local regulations is the responsibility of the Wrecker Contractor.

Wrecker Contractor will be available twenty-four (24) hours a day, seven (7) days a week, 365 days per year, to respond to calls for service. Wrecker Contractor will respond to police dispatched calls within forty-five (45) minutes of the time the call is received, except in inclement weather.

Wrecker Contractor will completely remove all resulting wreckage, debris, and reasonable amounts of fluids which are dropped or spilled from the site of an accident. Prior to leaving the scene of an accident, Wrecker Contractor will remove any and all other reasonable amounts of substances dropped upon the highway from such vehicle(s), including all broken glass which remains in the street, but excluding truck or vehicle cargos.

Wichita Police Department may direct Wrecker Contractor to tow impound vehicles and all other items without a VIN directly to the City of Wichita, Central Maintenance Facility, 1801 S. McLean, Wichita, KS. Wichita Police Department will pay the cost of the tow to the Wrecker Contractor as per the fee schedule as stated in Exhibit B.

All wreckers will be clearly and permanently marked with the name and address of the licensee on both doors of the vehicle. All wrecker drivers shall wear shirts identifying the licensee's company name. All wreckers will be registered with the Kansas Corporation Commission. Such registration shall remain current during the term of this agreement.

Wrecker Contractor will have a minimum of three (3) tow trucks, all of which will be a minimum 16,000 GVW.

Wrecker Contractor will provide a lot capacity of at least 15,000 square feet. Wrecker Contractor will have a clearly identified space exclusively for Wichita Police Department impounds. Such area does not have to be the entire 15,000 square foot lot size. The properties need to be properly zoned and, if required, have a Conditional Use Permit that would allow the uses that would be able to be used for this agreement.

Wrecker Contractor will maintain an office adjacent to its storage facility to enable legal owners of vehicles to retrieve their vehicles. This office will be open to the public 365 days per year, daily from 7 a.m. to 7 p.m. so that the owners may retrieve their vehicles.

Wrecker Contractor will provide a contact person and telephone number that will be responsible for dealing with the public and the Wichita Police Department staff, along with the handling of any complaints.

Wrecker Contractor will digitally photograph all vehicles prior to impounding the vehicle. A minimum of ten (10) digital photographs shall be taken per vehicle and emailed daily to the Wichita Police Department's Property and Evidence Section. Photographs of the engine/transmission, front of vehicle, right side of vehicle, left side of vehicle, rear of vehicle, keys, contents of front seat, contents of back seat, contents of trunk unless inaccessible, odometer reading if available, and interior (mainly the dash area to capture stereo equipment), and one photograph of the VIN number are mandatory. Such photos will be stored by Wrecker Contractor for sixty (60) days, or until the vehicle is released and the photographs are available for the Wichita Police Property and Evidence staff to view and print.

Wrecker Contractor will accept credit cards or debit cards for payment for the release of Impound vehicles at no additional cost to the owner.

Wrecker Contractor will keep up-to-date with all federal, state and local income, sales and property taxes. Wrecker Contractor will pay, all federal and state withholding taxes when due.

Wrecker Contractor will be a properly organized Kansas Corporation authorized to transact business within the State of Kansas. Wrecker Contractor shall, at all times, remain in good standing with the Kansas Secretary of State.

Wrecker Contractor shall comply with all Kansas Statutes and city ordinances and any subsequent amendments thereto, relative to the towing, removing, or storing of vehicles at the request of the City, and the sale or release of vehicles by the Wrecker Contractor. Failure to comply with these applicable laws shall constitute grounds for termination of the contract.

#### b. Reporting

Wrecker Contractor will be required to furnish the following monthly reports to the Wichita Police Department by the 10<sup>th</sup> day of the following month:

Wrecker Contractor will complete the Wichita Police Department's form that details all charges for each impound tow. Monthly reports will be provided by the Wrecker Contractor of all of the Wichita Police Department's invoiced impound property on hand, detailed billing of each impound tow, to include vehicle information (color, make/model, year, VIN), case number, the purchased price at the on-line auction, and the amount to be paid to the Wichita Police Department. These reports shall be submitted to Wichita Police Department staff by the 10<sup>th</sup> day of the following month. Other reports to facilitate auditing may be requested during this agreement as requested by the Wichita Police Department staff.

Wrecker Contractor will provide electronic daily reports to the Wichita Police Department's Property and Evidence staff, including digital photographs of each towed vehicle. Reports should include the time and date of the tow, location of tow request, time the tow unit is on the scene, time the towed vehicle arrived at the storage facility, total mileage of the tow, tow truck number and driver, the lot the vehicle was towed to, year, make, model, VIN number, and case number if available. Release documents of vehicles returned to owners shall be submitted to the Wichita Police Department within twenty-four (24) hours of the release of the vehicle.

There is a maximum of forty (40) days of storage at twenty seven dollars (\$27) per day that may be charged to vehicles that are released back to the owners.

c. Disposition of Vehicles

The Wichita Police Department will provide the first legal notification to the owner of the impounded vehicle at the City's expense, as required by State Statute. The remaining statutory notifications are the sole responsibility of the Wrecker Contractor. All costs associated with the required subsequent notifications shall be at the sole expense of the Wrecker Contractor. After the required statutory period has passed, Wrecker Contractor will be allowed to auction the vehicle. The disposal of impounded vehicles shall be in compliance pursuant to all of the requirements set forth in K.S.A. 8-1102. Wrecker Contractor will hold the City harmless and indemnify the City from all claims, suits, actions, and proceedings of every name or description as a result the improper sale of any vehicle, or Wrecker Contractor's failure to properly notify the legal owner of the sale as required by law, unless the City illegally or improperly impounded the vehicle.

Wrecker Contractor will utilize their selected auction firm for selling impounded vehicles utilizing an on-line auction services. Wrecker Contractor shall notify the Wichita Police Department within twenty (20) days of execution of this agreement, the Auction Firm they have selected. Wrecker Contractor may not own, or have any ownership interest, in any Auction Firm used by the Wrecker Contractor. The Wichita Police Department must be notified in writing within ten (10) days of any change in the selected Auction Firm. The selected Auction Firm representative will photograph and write a description of each vehicle or equipment to be sold. Vehicles and/or equipment will be sold in the next available auction, after the required thirty (30) day waiting period, or as required in State Statute.

The selected Auction Firm will advertise a Legal Publication of the vehicle(s) and/or equipment sale and send the legal publication affidavit to Wichita Police Department staff prior to the sale date. The Wrecker Contractor will remove and properly dispose of (destroy) the license plates from vehicles prior to the auction date. All publication costs are the sole responsibility of the Wrecker Contractor or its selected Auction Firm.

Wrecker Contractor shall allow potential public auction purchasers the ability to register, bid on impound vehicles and have access to inspect vehicles by appointment only, or a

designated open house, during normal business hours between 8:00 a.m. and 5:00 p.m., Monday through Friday.

Wrecker Contractor shall allow, without the assessment of storage fees, purchasers seven (7) days following the close of an auction to take delivery of a purchased vehicle. On the seventh day, Wrecker Contractor shall notify their selected auction representative, if the vehicle is not picked up by the purchaser. If such vehicle is not picked up within that time frame, Wrecker Contractor may assess storage fees of twenty seven dollars (\$27) per day for each additional day the vehicle remains on the lot, to be paid for by the purchaser. If a vehicle is not picked up within ten (10) days following the close of an auction, Wrecker Contractor may sell the vehicle at the next scheduled auction.

- III. ***Wrecker Fees for Release Vehicles.*** Wrecker Contractor shall assess towing and storage fees in an amount not to exceed those set forth in Exhibit B attached hereto. In addition, Wrecker Contractor agrees to collect a fee of thirty dollars (\$30) per released vehicle for notices, to be processed by the Wichita Police Department. Such fee shall be transmitted to the Wichita Police Department monthly.

IV. ***Conditions of Agreement***

Wichita Police Department reserves the right to have any vehicle returned to the possession of the Department, or its rightful owner, prior to auction, even if the item has already been collected by proposer, if all fees accumulated to date are paid in full. The Wichita Police Department will have the right to any vehicle that is part of a criminal investigation.

Wichita Police Department may conduct regular and unannounced random inspections of the Wrecker Contractor facility twenty-four (24) hours a day, seven (7) days per week, and 365 days per year. Wrecker Contractor will allow the Wichita Police Department to monitor all administrative functions associated with Wichita Police Department vehicles taken into custody by the Wrecker Contractor.

During the performance of this contract, Wrecker Contractor shall retain, all records pertaining to this agreement for a period of three (3) years from the completion of the contract. Such records shall be available to the Wichita Police Department during the Wrecker Contractor's normal working hours.

City reserves the right to conduct an audit of all Wrecker Contractor documents relating to this contract on a regular and unannounced random basis. All files relative to this agreement will be made available during normal working hours.

- V. ***Billing and Payment.*** Impounded vehicles will be sold utilizing the Auction Firm selected by the Wrecker Contractor. The selected Auction Firm will be utilized for the annual term of the contract.

The selected Auction Firm or Wrecker Contractor will remit one hundred and twenty-five dollars (\$125) to the Wichita Police Department per four-wheeled vehicle with an engine

and transmission sold, with the remaining of the auction proceeds to be paid to the Wrecker Contractor for the towing and storage fees of each vehicle. The Wichita Police Department will be paid an amount of one hundred and twenty-five dollars (\$125) for each such impounded vehicle sold by the selected Auction Firm, regardless of the sale price of the impounded vehicle. The selected Auction Firm or Wrecker Contractor will remit fifteen percent (15%) of the gross sale price of all other items sold at auction to the Wichita Police Department. Wrecker Contractor shall provide verification to the Wichita Police Department of all such vehicles or other items that have been approved by Wichita Police Department to be properly destroyed and shall keep any proceeds obtained from the destruction of property. The selected Auction Firm or Wrecker Contractor shall make payment Wichita Police Department for each impound vehicle sold within twenty (20) business days of the sale of the vehicle.

The Auction Firm shall remit detailed auction sale invoices to the Wichita Police Department from each completed auction, detailing the vehicle VIN number, impound case number and sale price to Wichita Police Department. The City will audit and verify the sale of impound vehicles from the payments submitted by the Auction Firm or Wrecker Contractor, as well as the sale price of the sold impound vehicles for reporting purposes.

Any personal property not returned to the owner of the impounded vehicle shall be sold at public auction and Auction Firm will provide an auction report to Wichita Police Department. The Wrecker Contractor shall receive, the auction sale price of such personal property. No proceeds of the sale of personal property shall be required to be transmitted to the Wichita Police Department.

- VI. ***Independent Contractor Status.*** The Wrecker Contractor's status for conduct of tasks described herein shall be as an independent contractor, and not as an agent or employee of the City. Any and all employees or agents of the Wrecker Contractor while engaged in the performance of any work or service required by the Wrecker Contractor under this Agreement shall be considered employees of the Wrecker Contractor only and not of the City. Any and all claims that may arise under the Kansas Workers' Compensation Act on behalf of said employees while so engaged, and any and all claims made by a third party as a consequence of any act or omission on the part of the Wrecker Contractor's employees or agents while so engaged in any of the work or service anticipated herein shall be the sole obligation and responsibility of the Wrecker Contractor.
- VII. ***Acceptance Procedure.*** The Wrecker Contractor shall render the deliverables as described in services to be performed, under the terms and conditions thereof. The City shall have a maximum of thirty (30) days from the delivery completed reports and recommendations within which to respond in writing to such delivery. If the City believes the completed work does not conform to the requirements of the Agreement, it shall notify the Wrecker Contractor in writing thereof, within the above-mentioned thirty (30) days and shall indicate with particularity in what manner the reports fails to conform. In the absence of such notice of non-conformance, acceptance of the work will be presumed.

- VIII. ***Nondiscrimination in Employment.*** During the performance of this Agreement, the Wrecker Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, disability, ancestry or national origin. The City's anti-discrimination requirements, attached as Exhibit A, are made a part of this Agreement by reference.
- IX. ***Termination by the City.*** If, for any cause within the term this Agreement, the Wrecker Contractor shall fail to fulfill its obligations under this Agreement in a timely and proper manner as required by this Agreement, or if the Wrecker Contractor shall violate any of the covenants, agreements, or stipulations of this Agreement, the City shall notify the Wrecker Contractor within ten (10) days of the violation. If the Wrecker Contractor has not remedied the violation within ten (10) days to the City's approval and acceptance, thereupon the City at its discretion shall have the right to terminate this Agreement by giving written notice to the Wrecker Contractor of such termination, effective thirty (30) days following receipt of same, provided, however, that the Wrecker Contractor shall be provided a reasonable time within which to remedy such deficiencies. The Wrecker Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed prior to the effective date of such termination.
- X. ***Termination by the Wrecker Contractor.*** The Wrecker Contractor may terminate this Agreement at any time for failure of the City to comply with any material terms or conditions of this Agreement, effective sixty (60) days following receipt, provided, however, that the City shall be provided a reasonable time within which to remedy such deficiencies. Wrecker Contractor may terminate this Agreement for any reason with one hundred and eighty (180) days written notice to the City.
- XI. ***Governing Law.*** The laws of the State of Kansas shall govern the validity, construction, interpretation, and effect of this Agreement.
- XII. ***Waivers.*** The failure of the parties to enforce, at any time, the provisions of this Agreement or to exercise any option which may be provided herein shall not be construed as a waiver of such provisions or to affect the validity of this Agreement or any part thereof or the right of the parties to enforce thereafter each and every provision and to exercise any such option. No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach. All remedies available under this Agreement shall be taken and construed as cumulative, that is, as being in addition to every other remedy provided by operation of law.

XIII. ***Representatives of Contracting Parties.*** The following designated parties shall represent the parties to this Agreement for notification and communication as may be required:

(a) Representing the City:

Chief of Police or designee  
Wichita Police Department  
455 N. Main 4<sup>th</sup> floor  
Wichita, Kansas 67202  
(316)268-4158

(b) Representing the Wrecker Contractor:

Kidd's Towing and Recovery, LLC  
Attn: Mr. Michael Kidd  
4740 W Esthner  
Wichita, KS 67209  
(316)945-8697

XIV. ***Insurance and Indemnification.***

A. Wrecker Contractor will carry occurrence insurance coverage during the term of this Contract and any extensions thereof in the amounts and manner provided as follows:

1. Comprehensive General Liability covering premises—operations, Broad Form Property Damage and Contractual Liability with minimum limits as follows:

Bodily Injury Liability	\$1,000,000 each occurrence \$1,000,000 each aggregate
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Property Damage Liability	\$1,000,000 each occurrence \$1,000,000 each aggregate
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Or

Bodily Injury and Property Damage Liability (Combined Single Limit)	\$1,000,000 each occurrence \$1,000,000 each aggregate
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2. Automobile Liability - Comprehensive Form including all owned, hired and non-owned vehicles with minimum limits for:

Bodily Injury Liability	\$1,000,000 each accident
Property Damage Liability	\$1,000,000 each accident

Or

Bodily Injury and Property Damage Liability (Combined Single Limit)	\$1,000,000 each accident
------------------------------------------------------------------------	---------------------------

3. Workers' Compensation/Employers Liability for minimum limits of:

Employers Liability	\$100,000 each accident
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4. Coverage shall include garage keeper's insurance as per license requirement.

- B. Wrecker Contractor shall save and hold the City harmless against all suits, claims, damages and losses for injuries to persons or property arising from or caused by errors, omissions or negligent acts of Wrecker Contractor, its officers, agents, servants, or employees, occurring in the performance of its services under this Agreement.

Wrecker Contractor will indemnify the City from all claims, suits, actions and proceedings of every name or description, in law or equity, including defense costs relating to or an account to any injuries or damages received or sustained by any person, firm or corporation as a result of any act or omission of Wrecker Contractor while engaged in any action or providing any service pursuant to this Agreement.

- XV. ***Prohibition Against Assignment and Delegation.*** Notwithstanding any other provision of this Agreement, the Wrecker Contractor warrants that it shall not transfer, pledge, or otherwise assign this Agreement, or any interest therein, or any claim arising there under, to any party or parties, bank, trust, company, or other financing institution. None of the Wrecker Contractor's duties under this Agreement may be delegated to or sub-contracted to any persons other than those described in the successful proposal without the express written permission of the City.
- XVI. ***Third Party Rights.*** It is specifically agreed between the parties that it is not intended by any of the provisions of this Agreement to create in the public or any member thereof a third-party beneficiary hereunder, or to authorize anyone not a party to this Agreement to maintain a suit for damages pursuant to the terms or provisions of this Agreement.
- XVII. ***Compliance with Laws.*** The Wrecker Contractor shall comply with all laws, statutes and ordinances that may pertain to the providing of services under this Agreement.
- XVIII. ***Representative's Authority to Contract.*** By signing this contract, the representative of the **WRECKER CONTRACTOR** represents that he or she is duly authorized by the **WRECKER CONTRACTOR** to execute this contract, and that the **WRECKER CONTRACTOR** has agreed to be bound by all its provisions.



**IN WITNESS WHEREOF**, the parties have set their hands the day and year first above written.

Attest:

City of Wichita, KS

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Karen Sublett  
City Clerk

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Jeff Longwell  
Mayor

Approved as to Form:

Kidd's Towing and Recovery, LLC

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Jennifer Magana  
City Attorney and Director of Law

---

Owner Name

## **EXHIBIT A**

### **REVISED NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION PROGRAM REQUIREMENTS STATEMENT FOR CONTRACTS OR AGREEMENTS**

During the term of this contract, the contractor or subcontractor, Contractor or supplier of the City, by whatever term identified herein, shall comply with the following Non-Discrimination--Equal Employment Opportunity/Affirmative Action Program Requirements:

- A. During the performance of this contract, the contractor, subcontractor, Contractor or supplier of the City, or any of its agencies, shall comply with all the provisions of the Civil Rights Act of 1964, as amended: The Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11131; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and laws, regulations or amendments as may be promulgated thereunder.
- B. Requirements of the State of Kansas:
  - 1. The contractor shall observe the provisions of the Kansas Act against Discrimination (Kansas Statutes Annotated 44-1001, et seq.) and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, and age except where age is a bona fide occupational qualification, national origin or ancestry;
  - 2. In all solicitations or advertisements for employees, the contractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase to be approved by the "Kansas Human Rights Commission";
  - 3. If the contractor fails to comply with the manner in which the contractor reports to the "Kansas Human Rights Commission" in accordance with the provisions of K.S.A. 1976 Supp. 44-1031, as amended, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
  - 4. If the contractor is found guilty of a violation of the Kansas Act against Discrimination under a decision or order of the "Kansas Human Rights Commission" which has become final, the contractor shall be deemed to have breached the present contract, and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

5. The contractor shall include the provisions of Paragraphs 1 through 4 inclusive, of this Subsection B, in every subcontract or purchase so that such provisions will be binding upon such subcontractor or Contractor.
- C. Requirements of the City of Wichita, Kansas, relating to Non-Discrimination -- Equal Employment Opportunity/Affirmative Action Program Requirements:
1. The Contractor, supplier, contractor or subcontractor shall practice Non-Discrimination -- Equal Employment Opportunity in all employment relations, including but not limited to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The contractor, supplier, contractor or subcontractor shall submit an Equal Employment Opportunity or Affirmative Action Program, when required, to the Department of Finance of the City of Wichita, Kansas, in accordance with the guidelines established for review and evaluation;
  2. The Contractor, supplier, contractor or subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, supplier, contractor or subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, "disability, and age except where age is a bona fide occupational qualification", national origin or ancestry. In all solicitations or advertisements for employees the Contractor, supplier, contractor or subcontractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase;
  3. The Contractor, supplier, contractor or subcontractor will furnish all information and reports required by the Department of Finance of said City for the purpose of investigation to ascertain compliance with Non-Discrimination -- Equal Employment Opportunity Requirements. If the Contractor, supplier, contractor, or subcontractor fails to comply with the manner in which he/she or it reports to the City in accordance with the provisions hereof, the Contractor, supplier, contractor or subcontractor shall be deemed to have breached the present contract, purchase order or agreement and it may be canceled, terminated or suspended in whole or in part by the City or its agency; and further Civil Rights complaints, or investigations may be referred to the State;
  4. The Contractor, supplier, contractor or subcontractor shall include the provisions of Subsections 1 through 3 inclusive, of this present section in every subcontract, subpurchase order or subagreement so that such provisions will be binding upon each subcontractor, subcontractor or subsupplier.

5. If the contractor fails to comply with the manner in which the contractor reports to the Department of Finance as stated above, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

D. Exempted from these requirements are:

1. Those contractors, subcontractors, Contractors or suppliers who have less than four (4) employees, whose contracts, purchase orders or agreements cumulatively total less than five thousand dollars (\$5,000) during the fiscal year of said City are exempt from any further Equal Employment Opportunity or Affirmative Action Program submittal.
2. Those Contractors, suppliers, contractors or subcontractors who have already complied with the provisions set forth in this section by reason of holding a contract with the Federal government or contract involving Federal funds; provided that such contractor, subcontractor, Contractor or supplier provides written notification of a compliance review and determination of an acceptable compliance posture within a preceding forty-five (45) day period from the Federal agency involved.

**EXHIBIT B**  
**WRECKER FEES**

No additional charges will be levied against vehicles towed under this Agreement without the written authorization of the Chief of Police or his designee, or at the request of the owner. The following fees shall apply to all Police Impounds. For Light Duty Towing there will be no tow charge that shall exceed \$185 unless the vehicle requires up righting or winching.

1. Light Duty Towing: \$95 hook up fee plus \$4.00 per loaded mile. Additional Charges include: Up righting - \$45; Dolly Service - \$43; Winching - \$25 per one-fourth hour; Waiting Time - \$15 per one-fourth hour;
2. Storage: \$27 per day; heavy duty storage: \$50 per day per unit
3. Tarp Fee: \$15
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9. Wichita Police Department Processing Fee for Notices: \$30

Any Police Impound released to the owner of the vehicle will have a maximum storage of forty five (45) days.

**AGREEMENT FOR IMPOUND SERVICES**  
**Wrecker Contractor**

**THIS AGREEMENT** is made between the City of Wichita, Kansas (hereinafter referred to as the City) and **Tow All of Kansas City, LLC, 4740 W Esthner, Wichita, KS 67209**, Telephone (316)945-8697, (hereinafter referred to as the Wrecker Contractor) on the 1st day of November, 2016.

**WHEREAS**, the City desires to employ the services of the Wrecker Contractor to provide 24/7 full service Impound Towing and Storage. These impound tow services will be for vehicles impounded as directed by the Wichita Police Department pursuant to Section 11.97.010 et seq. of the Code of the City of Wichita. Examples of impounded vehicles are tows from arrests, accidents, and abandoned vehicles. Wrecker Contractor will auction the impounded vehicles as directed by the Wichita Police Department utilizing the auction service selected by Wrecker contractor; and

**WHEREAS**, the **CITY** has solicited a proposal for impound towing, storage, and on-line auction services (Formal Proposal – FP640016; and

**WHEREAS**, the City has sought competitive proposals for this purpose under Proposal No. FP640016, and Wrecker Contractor has submitted the proposal beneficial to the City; and

**WHEREAS**, the Wrecker Contractor is capable of providing the impound towing, storage, and on-line auction services required; and

**WHEREAS** K.S.A. 8-1101 et seq. are the state laws applicable to the towing, removing, storing, sale, and release of vehicles by towing companies. The City and Wrecker Contractor are bound by the provisions of these State Statutes and City Code 11.97.010 et seq. and City Code 3.40 et seq. of the City of Wichita.

**NOW, THEREFORE**, the parties agree as follows:

- I. **Term.** The work under this Agreement shall commence on or about November 1, 2016. The term of this contract shall be from November 1, 2016, through February 28, 2018, with options to renew the contract under the same terms and conditions for four (4) successive one (1) year terms by mutual agreement of the parties. Wrecker Contractor will begin towing impounded vehicles to its own lot on November 1, 2016.
- II. **Services to be Performed by the Wrecker Contractor.** Wrecker Contractor shall provide to the **CITY** those services specified in its response to Formal Proposal Number – FP640016, which are incorporated herein by this reference the same as if it were fully set forth. The request for proposal package, including all specifications and addendums, provided by the City of Wichita as part of the request for proposal letting process for FP640016, shall be considered a part of this contract and is incorporated by reference herein.

a. Agreement

The parties agree that during the terms of this agreement the City of Wichita may establish its own wrecker service that may be included in the S.P.I.D.E.R. rotation list for Police Impound Services. The City of Wichita reserves the right during the renewal term of this agreement to include additional licensed Wrecker Contractors or entities that meet the City Towing Ordinances, and agree to the existing terms of this contract, may be added to the current Wrecker Contractor list in the S.P.I.D.E.R. rotation. Compliance with State and local regulations is the responsibility of the Wrecker Contractor.

Wrecker Contractor will be available twenty-four (24) hours a day, seven (7) days a week, 365 days per year, to respond to calls for service. Wrecker Contractor will respond to police dispatched calls within forty-five (45) minutes of the time the call is received, except in inclement weather.

Wrecker Contractor will completely remove all resulting wreckage, debris, and reasonable amounts of fluids which are dropped or spilled from the site of an accident. Prior to leaving the scene of an accident, Wrecker Contractor will remove any and all other reasonable amounts of substances dropped upon the highway from such vehicle(s), including all broken glass which remains in the street, but excluding truck or vehicle cargos.

Wichita Police Department may direct Wrecker Contractor to tow impound vehicles and all other items without a VIN directly to the City of Wichita, Central Maintenance Facility, 1801 S. McLean, Wichita, KS. Wichita Police Department will pay the cost of the tow to the Wrecker Contractor as per the fee schedule as stated in Exhibit B.

All wreckers will be clearly and permanently marked with the name and address of the licensee on both doors of the vehicle. All wrecker drivers shall wear shirts identifying the licensee's company name. All wreckers will be registered with the Kansas Corporation Commission. Such registration shall remain current during the term of this agreement.

Wrecker Contractor will have a minimum of three (3) tow trucks, all of which will be a minimum 16,000 GVW.

Wrecker Contractor will provide a lot capacity of at least 15,000 square feet. Wrecker Contractor will have a clearly identified space exclusively for Wichita Police Department impounds. Such area does not have to be the entire 15,000 square foot lot size. The properties need to be properly zoned and, if required, have a Conditional Use Permit that would allow the uses that would be able to be used for this agreement.

Wrecker Contractor will maintain an office adjacent to its storage facility to enable legal owners of vehicles to retrieve their vehicles. This office will be open to the public 365 days per year, daily from 7 a.m. to 7 p.m. so that the owners may retrieve their vehicles.

Wrecker Contractor will provide a contact person and telephone number that will be responsible for dealing with the public and the Wichita Police Department staff, along with the handling of any complaints.

Wrecker Contractor will digitally photograph all vehicles prior to impounding the vehicle. A minimum of ten (10) digital photographs shall be taken per vehicle and emailed daily to the Wichita Police Department's Property and Evidence Section. Photographs of the engine/transmission, front of vehicle, right side of vehicle, left side of vehicle, rear of vehicle, keys, contents of front seat, contents of back seat, contents of trunk unless inaccessible, odometer reading if available, and interior (mainly the dash area to capture stereo equipment), and one photograph of the VIN number are mandatory. Such photos will be stored by Wrecker Contractor for sixty (60) days, or until the vehicle is released and the photographs are available for the Wichita Police Property and Evidence staff to view and print.

Wrecker Contractor will accept credit cards or debit cards for payment for the release of Impound vehicles at no additional cost to the owner.

Wrecker Contractor will keep up-to-date with all federal, state and local income, sales and property taxes. Wrecker Contractor will pay, all federal and state withholding taxes when due.

Wrecker Contractor will be a properly organized Kansas Corporation authorized to transact business within the State of Kansas. Wrecker Contractor shall, at all times, remain in good standing with the Kansas Secretary of State.

Wrecker Contractor shall comply with all Kansas Statutes and city ordinances and any subsequent amendments thereto, relative to the towing, removing, or storing of vehicles at the request of the City, and the sale or release of vehicles by the Wrecker Contractor. Failure to comply with these applicable laws shall constitute grounds for termination of the contract.

b. Reporting

Wrecker Contractor will be required to furnish the following monthly reports to the Wichita Police Department by the 10<sup>th</sup> day of the following month:

Wrecker Contractor will complete the Wichita Police Department's form that details all charges for each impound tow. Monthly reports will be provided by the Wrecker Contractor of all of the Wichita Police Department's invoiced impound property on hand, detailed billing of each impound tow, to include vehicle information (color, make/model, year, VIN), case number, the purchased price at the on-line auction, and the amount to be paid to the Wichita Police Department. These reports shall be submitted to Wichita Police Department staff by the 10<sup>th</sup> day of the following month. Other reports to facilitate auditing may be requested during this agreement as requested by the Wichita Police Department staff.



Wrecker Contractor will provide electronic daily reports to the Wichita Police Department's Property and Evidence staff, including digital photographs of each towed vehicle. Reports should include the time and date of the tow, location of tow request, time the tow unit is on the scene, time the towed vehicle arrived at the storage facility, total mileage of the tow, tow truck number and driver, the lot the vehicle was towed to, year, make, model, VIN number, and case number if available. Release documents of vehicles returned to owners shall be submitted to the Wichita Police Department within twenty-four (24) hours of the release of the vehicle.

There is a maximum of forty (40) days of storage at twenty seven dollars (\$27) per day that may be charged to vehicles that are released back to the owners.

c. Disposition of Vehicles

The Wichita Police Department will provide the first legal notification to the owner of the impounded vehicle at the City's expense, as required by State Statute. The remaining statutory notifications are the sole responsibility of the Wrecker Contractor. All costs associated with the required subsequent notifications shall be at the sole expense of the Wrecker Contractor. After the required statutory period has passed, Wrecker Contractor will be allowed to auction the vehicle. The disposal of impounded vehicles shall be in compliance pursuant to all of the requirements set forth in K.S.A. 8-1102. Wrecker Contractor will hold the City harmless and indemnify the City from all claims, suits, actions, and proceedings of every name or description as a result the improper sale of any vehicle, or Wrecker Contractor's failure to properly notify the legal owner of the sale as required by law, unless the City illegally or improperly impounded the vehicle.

Wrecker Contractor will utilize their selected auction firm for selling impounded vehicles utilizing an on-line auction services. Wrecker Contractor shall notify the Wichita Police Department within twenty (20) days of execution of this agreement, the Auction Firm they have selected. Wrecker Contractor may not own, or have any ownership interest, in any Auction Firm used by the Wrecker Contractor. The Wichita Police Department must be notified in writing within ten (10) days of any change in the selected Auction Firm. The selected Auction Firm representative will photograph and write a description of each vehicle or equipment to be sold. Vehicles and/or equipment will be sold in the next available auction, after the required thirty (30) day waiting period, or as required in State Statute.

The selected Auction Firm will advertise a Legal Publication of the vehicle(s) and/or equipment sale and send the legal publication affidavit to Wichita Police Department staff prior to the sale date. The Wrecker Contractor will remove and properly dispose of (destroy) the license plates from vehicles prior to the auction date. All publication costs are the sole responsibility of the Wrecker Contractor or its selected Auction Firm.

Wrecker Contractor shall allow potential public auction purchasers the ability to register, bid on impound vehicles and have access to inspect vehicles by appointment only, or a

designated open house, during normal business hours between 8:00 a.m. and 5:00 p.m., Monday through Friday.

Wrecker Contractor shall allow, without the assessment of storage fees, purchasers seven (7) days following the close of an auction to take delivery of a purchased vehicle. On the seventh day, Wrecker Contractor shall notify their selected auction representative, if the vehicle is not picked up by the purchaser. If such vehicle is not picked up within that time frame, Wrecker Contractor may assess storage fees of twenty seven dollars (\$27) per day for each additional day the vehicle remains on the lot, to be paid for by the purchaser. If a vehicle is not picked up within ten (10) days following the close of an auction, Wrecker Contractor may sell the vehicle at the next scheduled auction.

- III. ***Wrecker Fees for Release Vehicles.*** Wrecker Contractor shall assess towing and storage fees in an amount not to exceed those set forth in Exhibit B attached hereto. In addition, Wrecker Contractor agrees to collect a fee of thirty dollars (\$30) per released vehicle for notices, to be processed by the Wichita Police Department. Such fee shall be transmitted to the Wichita Police Department monthly.

IV. ***Conditions of Agreement***

Wichita Police Department reserves the right to have any vehicle returned to the possession of the Department, or its rightful owner, prior to auction, even if the item has already been collected by proposer, if all fees accumulated to date are paid in full. The Wichita Police Department will have the right to any vehicle that is part of a criminal investigation.

Wichita Police Department may conduct regular and unannounced random inspections of the Wrecker Contractor facility twenty-four (24) hours a day, seven (7) days per week, and 365 days per year. Wrecker Contractor will allow the Wichita Police Department to monitor all administrative functions associated with Wichita Police Department vehicles taken into custody by the Wrecker Contractor.

During the performance of this contract, Wrecker Contractor shall retain, all records pertaining to this agreement for a period of three (3) years from the completion of the contract. Such records shall be available to the Wichita Police Department during the Wrecker Contractor's normal working hours.

City reserves the right to conduct an audit of all Wrecker Contractor documents relating to this contract on a regular and unannounced random basis. All files relative to this agreement will be made available during normal working hours.

- V. ***Billing and Payment.*** Impounded vehicles will be sold utilizing the Auction Firm selected by the Wrecker Contractor. The selected Auction Firm will be utilized for the annual term of the contract.

The selected Auction Firm or Wrecker Contractor will remit one hundred and twenty-five dollars (\$125) to the Wichita Police Department per four-wheeled vehicle with an engine

and transmission sold, with the remaining of the auction proceeds to be paid to the Wrecker Contractor for the towing and storage fees of each vehicle. The Wichita Police Department will be paid an amount of one hundred and twenty-five dollars (\$125) for each such impounded vehicle sold by the selected Auction Firm, regardless of the sale price of the impounded vehicle. The selected Auction Firm or Wrecker Contractor will remit fifteen percent (15%) of the gross sale price of all other items sold at auction to the Wichita Police Department. Wrecker Contractor shall provide verification to the Wichita Police Department of all such vehicles or other items that have been approved by Wichita Police Department to be properly destroyed and shall keep any proceeds obtained from the destruction of property. The selected Auction Firm or Wrecker Contractor shall make payment Wichita Police Department for each impound vehicle sold within twenty (20) business days of the sale of the vehicle.

The Auction Firm shall remit detailed auction sale invoices to the Wichita Police Department from each completed auction, detailing the vehicle VIN number, impound case number and sale price to Wichita Police Department. The City will audit and verify the sale of impound vehicles from the payments submitted by the Auction Firm or Wrecker Contractor, as well as the sale price of the sold impound vehicles for reporting purposes.

Any personal property not returned to the owner of the impounded vehicle shall be sold at public auction and Auction Firm will provide an auction report to Wichita Police Department. The Wrecker Contractor shall receive, the auction sale price of such personal property. No proceeds of the sale of personal property shall be required to be transmitted to the Wichita Police Department.

- VI. ***Independent Contractor Status.*** The Wrecker Contractor's status for conduct of tasks described herein shall be as an independent contractor, and not as an agent or employee of the City. Any and all employees or agents of the Wrecker Contractor while engaged in the performance of any work or service required by the Wrecker Contractor under this Agreement shall be considered employees of the Wrecker Contractor only and not of the City. Any and all claims that may arise under the Kansas Workers' Compensation Act on behalf of said employees while so engaged, and any and all claims made by a third party as a consequence of any act or omission on the part of the Wrecker Contractor's employees or agents while so engaged in any of the work or service anticipated herein shall be the sole obligation and responsibility of the Wrecker Contractor.
- VII. ***Acceptance Procedure.*** The Wrecker Contractor shall render the deliverables as described in services to be performed, under the terms and conditions thereof. The City shall have a maximum of thirty (30) days from the delivery completed reports and recommendations within which to respond in writing to such delivery. If the City believes the completed work does not conform to the requirements of the Agreement, it shall notify the Wrecker Contractor in writing thereof, within the above-mentioned thirty (30) days and shall indicate with particularity in what manner the reports fails to conform. In the absence of such notice of non-conformance, acceptance of the work will be presumed.

- VIII. ***Nondiscrimination in Employment.*** During the performance of this Agreement, the Wrecker Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, disability, ancestry or national origin. The City's anti-discrimination requirements, attached as Exhibit A, are made a part of this Agreement by reference.
- IX. ***Termination by the City.*** If, for any cause within the term this Agreement, the Wrecker Contractor shall fail to fulfill its obligations under this Agreement in a timely and proper manner as required by this Agreement, or if the Wrecker Contractor shall violate any of the covenants, agreements, or stipulations of this Agreement, the City shall notify the Wrecker Contractor within ten (10) days of the violation. If the Wrecker Contractor has not remedied the violation within ten (10) days to the City's approval and acceptance, thereupon the City at its discretion shall have the right to terminate this Agreement by giving written notice to the Wrecker Contractor of such termination, effective thirty (30) days following receipt of same, provided, however, that the Wrecker Contractor shall be provided a reasonable time within which to remedy such deficiencies. The Wrecker Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed prior to the effective date of such termination.
- X. ***Termination by the Wrecker Contractor.*** The Wrecker Contractor may terminate this Agreement at any time for failure of the City to comply with any material terms or conditions of this Agreement, effective sixty (60) days following receipt, provided, however, that the City shall be provided a reasonable time within which to remedy such deficiencies. Wrecker Contractor may terminate this Agreement for any reason with one hundred and eighty (180) days written notice to the City.
- XI. ***Governing Law.*** The laws of the State of Kansas shall govern the validity, construction, interpretation, and effect of this Agreement.
- XII. ***Waivers.*** The failure of the parties to enforce, at any time, the provisions of this Agreement or to exercise any option which may be provided herein shall not be construed as a waiver of such provisions or to affect the validity of this Agreement or any part thereof or the right of the parties to enforce thereafter each and every provision and to exercise any such option. No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach. All remedies available under this Agreement shall be taken and construed as cumulative, that is, as being in addition to every other remedy provided by operation of law.

XIII. ***Representatives of Contracting Parties.*** The following designated parties shall represent the parties to this Agreement for notification and communication as may be required:

(a) Representing the City:

Chief of Police or designee  
Wichita Police Department  
455 N. Main 4<sup>th</sup> floor  
Wichita, Kansas 67202  
(316)268-4158

(b) Representing the Wrecker Contractor:

Tow All of Kansas City, LLC  
Attn: Mr. Michael Kidd  
4740 W Esthner  
Wichita, KS 67209  
(316)945-8697

XIV. ***Insurance and Indemnification.***

A. Wrecker Contractor will carry occurrence insurance coverage during the term of this Contract and any extensions thereof in the amounts and manner provided as follows:

1. Comprehensive General Liability covering premises—operations, Broad Form Property Damage and Contractual Liability with minimum limits as follows:

Bodily Injury Liability	\$1,000,000 each occurrence \$1,000,000 each aggregate
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Property Damage Liability	\$1,000,000 each occurrence \$1,000,000 each aggregate
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Or

Bodily Injury and Property Damage Liability (Combined Single Limit)	\$1,000,000 each occurrence \$1,000,000 each aggregate
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2. Automobile Liability - Comprehensive Form including all owned, hired and non-owned vehicles with minimum limits for:

Bodily Injury Liability	\$1,000,000 each accident
Property Damage Liability	\$1,000,000 each accident

Or

Bodily Injury and Property Damage Liability (Combined Single Limit)	\$1,000,000 each accident
------------------------------------------------------------------------	---------------------------

3. Workers' Compensation/Employers Liability for minimum limits of:

Employers Liability	\$100,000 each accident
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4. Coverage shall include garage keeper's insurance as per license requirement.

- B. Wrecker Contractor shall save and hold the City harmless against all suits, claims, damages and losses for injuries to persons or property arising from or caused by errors, omissions or negligent acts of Wrecker Contractor, its officers, agents, servants, or employees, occurring in the performance of its services under this Agreement.

Wrecker Contractor will indemnify the City from all claims, suits, actions and proceedings of every name or description, in law or equity, including defense costs relating to or an account to any injuries or damages received or sustained by any person, firm or corporation as a result of any act or omission of Wrecker Contractor while engaged in any action or providing any service pursuant to this Agreement.

- XV. ***Prohibition Against Assignment and Delegation.*** Notwithstanding any other provision of this Agreement, the Wrecker Contractor warrants that it shall not transfer, pledge, or otherwise assign this Agreement, or any interest therein, or any claim arising there under, to any party or parties, bank, trust, company, or other financing institution. None of the Wrecker Contractor's duties under this Agreement may be delegated to or sub-contracted to any persons other than those described in the successful proposal without the express written permission of the City.
- XVI. ***Third Party Rights.*** It is specifically agreed between the parties that it is not intended by any of the provisions of this Agreement to create in the public or any member thereof a third-party beneficiary hereunder, or to authorize anyone not a party to this Agreement to maintain a suit for damages pursuant to the terms or provisions of this Agreement.
- XVII. ***Compliance with Laws.*** The Wrecker Contractor shall comply with all laws, statutes and ordinances that may pertain to the providing of services under this Agreement.
- XVIII. ***Representative's Authority to Contract.*** By signing this contract, the representative of the **WRECKER CONTRACTOR** represents that he or she is duly authorized by the **WRECKER CONTRACTOR** to execute this contract, and that the **WRECKER CONTRACTOR** has agreed to be bound by all its provisions.

**IN WITNESS WHEREOF**, the parties have set their hands the day and year first above written.

Attest:

City of Wichita, KS

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Karen Sublett  
City Clerk

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Jeff Longwell  
Mayor

Approved as to Form:

Tow All of Kansas City, LLC

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Jennifer Magana  
City Attorney and Director of Law

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Owner Name

## **EXHIBIT A**

### **REVISED NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION PROGRAM REQUIREMENTS STATEMENT FOR CONTRACTS OR AGREEMENTS**

During the term of this contract, the contractor or subcontractor, Contractor or supplier of the City, by whatever term identified herein, shall comply with the following Non-Discrimination--Equal Employment Opportunity/Affirmative Action Program Requirements:

- A. During the performance of this contract, the contractor, subcontractor, Contractor or supplier of the City, or any of its agencies, shall comply with all the provisions of the Civil Rights Act of 1964, as amended: The Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11131; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and laws, regulations or amendments as may be promulgated thereunder.
- B. Requirements of the State of Kansas:
  - 1. The contractor shall observe the provisions of the Kansas Act against Discrimination (Kansas Statutes Annotated 44-1001, et seq.) and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, and age except where age is a bona fide occupational qualification, national origin or ancestry;
  - 2. In all solicitations or advertisements for employees, the contractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase to be approved by the "Kansas Human Rights Commission";
  - 3. If the contractor fails to comply with the manner in which the contractor reports to the "Kansas Human Rights Commission" in accordance with the provisions of K.S.A. 1976 Supp. 44-1031, as amended, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
  - 4. If the contractor is found guilty of a violation of the Kansas Act against Discrimination under a decision or order of the "Kansas Human Rights Commission" which has become final, the contractor shall be deemed to have breached the present contract, and it may be canceled, terminated or suspended in whole or in part by the contracting agency;



5. The contractor shall include the provisions of Paragraphs 1 through 4 inclusive, of this Subsection B, in every subcontract or purchase so that such provisions will be binding upon such subcontractor or Contractor.
- C. Requirements of the City of Wichita, Kansas, relating to Non-Discrimination -- Equal Employment Opportunity/Affirmative Action Program Requirements:
1. The Contractor, supplier, contractor or subcontractor shall practice Non-Discrimination -- Equal Employment Opportunity in all employment relations, including but not limited to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The contractor, supplier, contractor or subcontractor shall submit an Equal Employment Opportunity or Affirmative Action Program, when required, to the Department of Finance of the City of Wichita, Kansas, in accordance with the guidelines established for review and evaluation;
  2. The Contractor, supplier, contractor or subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, supplier, contractor or subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, "disability, and age except where age is a bona fide occupational qualification", national origin or ancestry. In all solicitations or advertisements for employees the Contractor, supplier, contractor or subcontractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase;
  3. The Contractor, supplier, contractor or subcontractor will furnish all information and reports required by the Department of Finance of said City for the purpose of investigation to ascertain compliance with Non-Discrimination -- Equal Employment Opportunity Requirements. If the Contractor, supplier, contractor, or subcontractor fails to comply with the manner in which he/she or it reports to the City in accordance with the provisions hereof, the Contractor, supplier, contractor or subcontractor shall be deemed to have breached the present contract, purchase order or agreement and it may be canceled, terminated or suspended in whole or in part by the City or its agency; and further Civil Rights complaints, or investigations may be referred to the State;
  4. The Contractor, supplier, contractor or subcontractor shall include the provisions of Subsections 1 through 3 inclusive, of this present section in every subcontract, subpurchase order or subagreement so that such provisions will be binding upon each subcontractor, subcontractor or subsupplier.

5. If the contractor fails to comply with the manner in which the contractor reports to the Department of Finance as stated above, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

D. Exempted from these requirements are:

1. Those contractors, subcontractors, Contractors or suppliers who have less than four (4) employees, whose contracts, purchase orders or agreements cumulatively total less than five thousand dollars (\$5,000) during the fiscal year of said City are exempt from any further Equal Employment Opportunity or Affirmative Action Program submittal.
2. Those Contractors, suppliers, contractors or subcontractors who have already complied with the provisions set forth in this section by reason of holding a contract with the Federal government or contract involving Federal funds; provided that such contractor, subcontractor, Contractor or supplier provides written notification of a compliance review and determination of an acceptable compliance posture within a preceding forty-five (45) day period from the Federal agency involved.

**EXHIBIT B**  
**WRECKER FEES**

No additional charges will be levied against vehicles towed under this Agreement without the written authorization of the Chief of Police or his designee, or at the request of the owner. The following fees shall apply to all Police Impounds. For Light Duty Towing there will be no tow charge that shall exceed \$185 unless the vehicle requires up righting or winching.

1. Light Duty Towing: \$95 hook up fee plus \$4.00 per loaded mile. Additional Charges include: Up righting - \$45; Dolly Service - \$43; Winching - \$25 per one-fourth hour; Waiting Time - \$15 per one-fourth hour;
2. Storage: \$27 per day; heavy duty storage: \$50 per day per unit
3. Tarp Fee: \$15
4. Oil Dry: \$15
5. Lot Fee: \$15
6. Medium/Heavy Duty Towing & Recovery: \$250 per hour portal to portal
7. Heavy Duty Landoll: Specialized Low Boy Transport \$250 per hour portal to portal
8. Clean up that requires loader, bobcats, power brooms, forklifts, and/or extra man power to be added to any tow based on the actual cost plus basis of the service rendered plus 10%.
9. Wichita Police Department Processing Fee for Notices: \$30

Any Police Impound released to the owner of the vehicle will have a maximum storage of forty five (45) days.

**AGREEMENT FOR IMPOUND SERVICES**  
**Wrecker Contractor**

**THIS AGREEMENT** is made between the City of Wichita, Kansas (hereinafter referred to as the City) and **Tow Service, Inc., 3760 S Broadway, Wichita, KS 67216**, Telephone (316)522-5353, (hereinafter referred to as the Wrecker Contractor) on the 1st day of November, 2016.

**WHEREAS**, the City desires to employ the services of the Wrecker Contractor to provide 24/7 full service Impound Towing and Storage. These impound tow services will be for vehicles impounded as directed by the Wichita Police Department pursuant to Section 11.97.010 et seq. of the Code of the City of Wichita. Examples of impounded vehicles are tows from arrests, accidents, and abandoned vehicles. Wrecker Contractor will auction the impounded vehicles as directed by the Wichita Police Department utilizing the auction service selected by Wrecker contractor; and

**WHEREAS**, the **CITY** has solicited a proposal for impound towing, storage, and on-line auction services (Formal Proposal – FP640016; and

**WHEREAS**, the City has sought competitive proposals for this purpose under Proposal No. FP640016, and Wrecker Contractor has submitted the proposal beneficial to the City; and

**WHEREAS**, the Wrecker Contractor is capable of providing the impound towing, storage, and on-line auction services required; and

**WHEREAS** K.S.A. 8-1101 et seq. are the state laws applicable to the towing, removing, storing, sale, and release of vehicles by towing companies. The City and Wrecker Contractor are bound by the provisions of these State Statutes and City Code 11.97.010 et seq. and City Code 3.40 et seq. of the City of Wichita.

**NOW, THEREFORE**, the parties agree as follows:

- I. **Term.** The work under this Agreement shall commence on or about November 1, 2016. The term of this contract shall be from November 1, 2016, through February 28, 2018, with options to renew the contract under the same terms and conditions for four (4) successive one (1) year terms by mutual agreement of the parties. Wrecker Contractor will begin towing impounded vehicles to its own lot on November 1, 2016.
- II. **Services to be Performed by the Wrecker Contractor.** Wrecker Contractor shall provide to the **CITY** those services specified in its response to Formal Proposal Number – FP640016, which are incorporated herein by this reference the same as if it were fully set forth. The request for proposal package, including all specifications and addendums, provided by the City of Wichita as part of the request for proposal letting process for FP640016, shall be considered a part of this contract and is incorporated by reference herein.

a. Agreement

The parties agree that during the terms of this agreement the City of Wichita may establish its own wrecker service that may be included in the S.P.I.D.E.R. rotation list for Police Impound Services. The City of Wichita reserves the right during the renewal term of this agreement to include additional licensed Wrecker Contractors or entities that meet the City Towing Ordinances, and agree to the existing terms of this contract, may be added to the current Wrecker Contractor list in the S.P.I.D.E.R. rotation. Compliance with State and local regulations is the responsibility of the Wrecker Contractor.

Wrecker Contractor will be available twenty-four (24) hours a day, seven (7) days a week, 365 days per year, to respond to calls for service. Wrecker Contractor will respond to police dispatched calls within forty-five (45) minutes of the time the call is received, except in inclement weather.

Wrecker Contractor will completely remove all resulting wreckage, debris, and reasonable amounts of fluids which are dropped or spilled from the site of an accident. Prior to leaving the scene of an accident, Wrecker Contractor will remove any and all other reasonable amounts of substances dropped upon the highway from such vehicle(s), including all broken glass which remains in the street, but excluding truck or vehicle cargos.

Wichita Police Department may direct Wrecker Contractor to tow impound vehicles and all other items without a VIN directly to the City of Wichita, Central Maintenance Facility, 1801 S. McLean, Wichita, KS. Wichita Police Department will pay the cost of the tow to the Wrecker Contractor as per the fee schedule as stated in Exhibit B.

All wreckers will be clearly and permanently marked with the name and address of the licensee on both doors of the vehicle. All wrecker drivers shall wear shirts identifying the licensee's company name. All wreckers will be registered with the Kansas Corporation Commission. Such registration shall remain current during the term of this agreement.

Wrecker Contractor will have a minimum of three (3) tow trucks, all of which will be a minimum 16,000 GVW.

Wrecker Contractor will provide a lot capacity of at least 15,000 square feet. Wrecker Contractor will have a clearly identified space exclusively for Wichita Police Department impounds. Such area does not have to be the entire 15,000 square foot lot size. The properties need to be properly zoned and, if required, have a Conditional Use Permit that would allow the uses that would be able to be used for this agreement.

Wrecker Contractor will maintain an office adjacent to its storage facility to enable legal owners of vehicles to retrieve their vehicles. This office will be open to the public 365 days per year, daily from 7 a.m. to 7 p.m. so that the owners may retrieve their vehicles.

Wrecker Contractor will provide a contact person and telephone number that will be responsible for dealing with the public and the Wichita Police Department staff, along with the handling of any complaints.

Wrecker Contractor will digitally photograph all vehicles prior to impounding the vehicle. A minimum of ten (10) digital photographs shall be taken per vehicle and emailed daily to the Wichita Police Department's Property and Evidence Section. Photographs of the engine/transmission, front of vehicle, right side of vehicle, left side of vehicle, rear of vehicle, keys, contents of front seat, contents of back seat, contents of trunk unless inaccessible, odometer reading if available, and interior (mainly the dash area to capture stereo equipment), and one photograph of the VIN number are mandatory. Such photos will be stored by Wrecker Contractor for sixty (60) days, or until the vehicle is released and the photographs are available for the Wichita Police Property and Evidence staff to view and print.

Wrecker Contractor will accept credit cards or debit cards for payment for the release of Impound vehicles at no additional cost to the owner.

Wrecker Contractor will keep up-to-date with all federal, state and local income, sales and property taxes. Wrecker Contractor will pay, all federal and state withholding taxes when due.

Wrecker Contractor will be a properly organized Kansas Corporation authorized to transact business within the State of Kansas. Wrecker Contractor shall, at all times, remain in good standing with the Kansas Secretary of State.

Wrecker Contractor shall comply with all Kansas Statutes and city ordinances and any subsequent amendments thereto, relative to the towing, removing, or storing of vehicles at the request of the City, and the sale or release of vehicles by the Wrecker Contractor. Failure to comply with these applicable laws shall constitute grounds for termination of the contract.

#### b. Reporting

Wrecker Contractor will be required to furnish the following monthly reports to the Wichita Police Department by the 10<sup>th</sup> day of the following month:

Wrecker Contractor will complete the Wichita Police Department's form that details all charges for each impound tow. Monthly reports will be provided by the Wrecker Contractor of all of the Wichita Police Department's invoiced impound property on hand, detailed billing of each impound tow, to include vehicle information (color, make/model, year, VIN), case number, the purchased price at the on-line auction, and the amount to be paid to the Wichita Police Department. These reports shall be submitted to Wichita Police Department staff by the 10<sup>th</sup> day of the following month. Other reports to facilitate auditing may be requested during this agreement as requested by the Wichita Police Department staff.

Wrecker Contractor will provide electronic daily reports to the Wichita Police Department's Property and Evidence staff, including digital photographs of each towed vehicle. Reports should include the time and date of the tow, location of tow request, time the tow unit is on the scene, time the towed vehicle arrived at the storage facility, total mileage of the tow, tow truck number and driver, the lot the vehicle was towed to, year, make, model, VIN number, and case number if available. Release documents of vehicles returned to owners shall be submitted to the Wichita Police Department within twenty-four (24) hours of the release of the vehicle.

There is a maximum of forty (40) days of storage at twenty seven dollars (\$27) per day that may be charged to vehicles that are released back to the owners.

c. Disposition of Vehicles

The Wichita Police Department will provide the first legal notification to the owner of the impounded vehicle at the City's expense, as required by State Statute. The remaining statutory notifications are the sole responsibility of the Wrecker Contractor. All costs associated with the required subsequent notifications shall be at the sole expense of the Wrecker Contractor. After the required statutory period has passed, Wrecker Contractor will be allowed to auction the vehicle. The disposal of impounded vehicles shall be in compliance pursuant to all of the requirements set forth in K.S.A. 8-1102. Wrecker Contractor will hold the City harmless and indemnify the City from all claims, suits, actions, and proceedings of every name or description as a result the improper sale of any vehicle, or Wrecker Contractor's failure to properly notify the legal owner of the sale as required by law, unless the City illegally or improperly impounded the vehicle.

Wrecker Contractor will utilize their selected auction firm for selling impounded vehicles utilizing an on-line auction services. Wrecker Contractor shall notify the Wichita Police Department within twenty (20) days of execution of this agreement, the Auction Firm they have selected. Wrecker Contractor may not own, or have any ownership interest, in any Auction Firm used by the Wrecker Contractor. The Wichita Police Department must be notified in writing within ten (10) days of any change in the selected Auction Firm. The selected Auction Firm representative will photograph and write a description of each vehicle or equipment to be sold. Vehicles and/or equipment will be sold in the next available auction, after the required thirty (30) day waiting period, or as required in State Statute.

The selected Auction Firm will advertise a Legal Publication of the vehicle(s) and/or equipment sale and send the legal publication affidavit to Wichita Police Department staff prior to the sale date. The Wrecker Contractor will remove and properly dispose of (destroy) the license plates from vehicles prior to the auction date. All publication costs are the sole responsibility of the Wrecker Contractor or its selected Auction Firm.

Wrecker Contractor shall allow potential public auction purchasers the ability to register, bid on impound vehicles and have access to inspect vehicles by appointment only, or a

designated open house, during normal business hours between 8:00 a.m. and 5:00 p.m., Monday through Friday.

Wrecker Contractor shall allow, without the assessment of storage fees, purchasers seven (7) days following the close of an auction to take delivery of a purchased vehicle. On the seventh day, Wrecker Contractor shall notify their selected auction representative, if the vehicle is not picked up by the purchaser. If such vehicle is not picked up within that time frame, Wrecker Contractor may assess storage fees of twenty seven dollars (\$27) per day for each additional day the vehicle remains on the lot, to be paid for by the purchaser. If a vehicle is not picked up within ten (10) days following the close of an auction, Wrecker Contractor may sell the vehicle at the next scheduled auction.

- III. ***Wrecker Fees for Release Vehicles.*** Wrecker Contractor shall assess towing and storage fees in an amount not to exceed those set forth in Exhibit B attached hereto. In addition, Wrecker Contractor agrees to collect a fee of thirty dollars (\$30) per released vehicle for notices, to be processed by the Wichita Police Department. Such fee shall be transmitted to the Wichita Police Department monthly.

IV. ***Conditions of Agreement***

Wichita Police Department reserves the right to have any vehicle returned to the possession of the Department, or its rightful owner, prior to auction, even if the item has already been collected by proposer, if all fees accumulated to date are paid in full. The Wichita Police Department will have the right to any vehicle that is part of a criminal investigation.

Wichita Police Department may conduct regular and unannounced random inspections of the Wrecker Contractor facility twenty-four (24) hours a day, seven (7) days per week, and 365 days per year. Wrecker Contractor will allow the Wichita Police Department to monitor all administrative functions associated with Wichita Police Department vehicles taken into custody by the Wrecker Contractor.

During the performance of this contract, Wrecker Contractor shall retain, all records pertaining to this agreement for a period of three (3) years from the completion of the contract. Such records shall be available to the Wichita Police Department during the Wrecker Contractor's normal working hours.

City reserves the right to conduct an audit of all Wrecker Contractor documents relating to this contract on a regular and unannounced random basis. All files relative to this agreement will be made available during normal working hours.

- V. ***Billing and Payment.*** Impounded vehicles will be sold utilizing the Auction Firm selected by the Wrecker Contractor. The selected Auction Firm will be utilized for the annual term of the contract.

The selected Auction Firm or Wrecker Contractor will remit one hundred and twenty-five dollars (\$125) to the Wichita Police Department per four-wheeled vehicle with an engine



and transmission sold, with the remaining of the auction proceeds to be paid to the Wrecker Contractor for the towing and storage fees of each vehicle. The Wichita Police Department will be paid an amount of one hundred and twenty-five dollars (\$125) for each such impounded vehicle sold by the selected Auction Firm, regardless of the sale price of the impounded vehicle. The selected Auction Firm or Wrecker Contractor will remit fifteen percent (15%) of the gross sale price of all other items sold at auction to the Wichita Police Department. Wrecker Contractor shall provide verification to the Wichita Police Department of all such vehicles or other items that have been approved by Wichita Police Department to be properly destroyed and shall keep any proceeds obtained from the destruction of property. The selected Auction Firm or Wrecker Contractor shall make payment Wichita Police Department for each impound vehicle sold within twenty (20) business days of the sale of the vehicle.

The Auction Firm shall remit detailed auction sale invoices to the Wichita Police Department from each completed auction, detailing the vehicle VIN number, impound case number and sale price to Wichita Police Department. The City will audit and verify the sale of impound vehicles from the payments submitted by the Auction Firm or Wrecker Contractor, as well as the sale price of the sold impound vehicles for reporting purposes.

Any personal property not returned to the owner of the impounded vehicle shall be sold at public auction and Auction Firm will provide an auction report to Wichita Police Department. The Wrecker Contractor shall receive, the auction sale price of such personal property. No proceeds of the sale of personal property shall be required to be transmitted to the Wichita Police Department.

- VI. ***Independent Contractor Status.*** The Wrecker Contractor's status for conduct of tasks described herein shall be as an independent contractor, and not as an agent or employee of the City. Any and all employees or agents of the Wrecker Contractor while engaged in the performance of any work or service required by the Wrecker Contractor under this Agreement shall be considered employees of the Wrecker Contractor only and not of the City. Any and all claims that may arise under the Kansas Workers' Compensation Act on behalf of said employees while so engaged, and any and all claims made by a third party as a consequence of any act or omission on the part of the Wrecker Contractor's employees or agents while so engaged in any of the work or service anticipated herein shall be the sole obligation and responsibility of the Wrecker Contractor.
- VII. ***Acceptance Procedure.*** The Wrecker Contractor shall render the deliverables as described in services to be performed, under the terms and conditions thereof. The City shall have a maximum of thirty (30) days from the delivery completed reports and recommendations within which to respond in writing to such delivery. If the City believes the completed work does not conform to the requirements of the Agreement, it shall notify the Wrecker Contractor in writing thereof, within the above-mentioned thirty (30) days and shall indicate with particularity in what manner the reports fails to conform. In the absence of such notice of non-conformance, acceptance of the work will be presumed.

- VIII. ***Nondiscrimination in Employment.*** During the performance of this Agreement, the Wrecker Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, disability, ancestry or national origin. The City's anti-discrimination requirements, attached as Exhibit A, are made a part of this Agreement by reference.
- IX. ***Termination by the City.*** If, for any cause within the term this Agreement, the Wrecker Contractor shall fail to fulfill its obligations under this Agreement in a timely and proper manner as required by this Agreement, or if the Wrecker Contractor shall violate any of the covenants, agreements, or stipulations of this Agreement, the City shall notify the Wrecker Contractor within ten (10) days of the violation. If the Wrecker Contractor has not remedied the violation within ten (10) days to the City's approval and acceptance, thereupon the City at its discretion shall have the right to terminate this Agreement by giving written notice to the Wrecker Contractor of such termination, effective thirty (30) days following receipt of same, provided, however, that the Wrecker Contractor shall be provided a reasonable time within which to remedy such deficiencies. The Wrecker Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed prior to the effective date of such termination.
- X. ***Termination by the Wrecker Contractor.*** The Wrecker Contractor may terminate this Agreement at any time for failure of the City to comply with any material terms or conditions of this Agreement, effective sixty (60) days following receipt, provided, however, that the City shall be provided a reasonable time within which to remedy such deficiencies. Wrecker Contractor may terminate this Agreement for any reason with one hundred and eighty (180) days written notice to the City.
- XI. ***Governing Law.*** The laws of the State of Kansas shall govern the validity, construction, interpretation, and effect of this Agreement.
- XII. ***Waivers.*** The failure of the parties to enforce, at any time, the provisions of this Agreement or to exercise any option which may be provided herein shall not be construed as a waiver of such provisions or to affect the validity of this Agreement or any part thereof or the right of the parties to enforce thereafter each and every provision and to exercise any such option. No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach. All remedies available under this Agreement shall be taken and construed as cumulative, that is, as being in addition to every other remedy provided by operation of law.

XIII. ***Representatives of Contracting Parties.*** The following designated parties shall represent the parties to this Agreement for notification and communication as may be required:

(a) Representing the City:

Chief of Police or designee  
Wichita Police Department  
455 N. Main 4<sup>th</sup> floor  
Wichita, Kansas 67202  
(316)268-4158

(b) Representing the Wrecker Contractor:

Tow Service, Inc.  
Attn: Mr. Mark Ysidro  
3760 S. Broadway  
Wichita, KS 67216  
(316)522-5353

XIV. ***Insurance and Indemnification.***

A. Wrecker Contractor will carry occurrence insurance coverage during the term of this Contract and any extensions thereof in the amounts and manner provided as follows:

1. Comprehensive General Liability covering premises—operations, Broad Form Property Damage and Contractual Liability with minimum limits as follows:

Bodily Injury Liability	\$1,000,000 each occurrence \$1,000,000 each aggregate
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Property Damage Liability	\$1,000,000 each occurrence \$1,000,000 each aggregate
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Or

Bodily Injury and Property Damage Liability (Combined Single Limit)	\$1,000,000 each occurrence \$1,000,000 each aggregate
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2. Automobile Liability - Comprehensive Form including all owned, hired and non-owned vehicles with minimum limits for:

Bodily Injury Liability	\$1,000,000 each accident
Property Damage Liability	\$1,000,000 each accident

Or

Bodily Injury and Property Damage Liability (Combined Single Limit)	\$1,000,000 each accident
------------------------------------------------------------------------	---------------------------

3. Workers' Compensation/Employers Liability for minimum limits of:

Employers Liability	\$100,000 each accident
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4. Coverage shall include garage keeper's insurance as per license requirement.

- B. Wrecker Contractor shall save and hold the City harmless against all suits, claims, damages and losses for injuries to persons or property arising from or caused by errors, omissions or negligent acts of Wrecker Contractor, its officers, agents, servants, or employees, occurring in the performance of its services under this Agreement.

Wrecker Contractor will indemnify the City from all claims, suits, actions and proceedings of every name or description, in law or equity, including defense costs relating to or an account to any injuries or damages received or sustained by any person, firm or corporation as a result of any act or omission of Wrecker Contractor while engaged in any action or providing any service pursuant to this Agreement.

- XV. ***Prohibition Against Assignment and Delegation.*** Notwithstanding any other provision of this Agreement, the Wrecker Contractor warrants that it shall not transfer, pledge, or otherwise assign this Agreement, or any interest therein, or any claim arising there under, to any party or parties, bank, trust, company, or other financing institution. None of the Wrecker Contractor's duties under this Agreement may be delegated to or sub-contracted to any persons other than those described in the successful proposal without the express written permission of the City.
- XVI. ***Third Party Rights.*** It is specifically agreed between the parties that it is not intended by any of the provisions of this Agreement to create in the public or any member thereof a third-party beneficiary hereunder, or to authorize anyone not a party to this Agreement to maintain a suit for damages pursuant to the terms or provisions of this Agreement.
- XVII. ***Compliance with Laws.*** The Wrecker Contractor shall comply with all laws, statutes and ordinances that may pertain to the providing of services under this Agreement.
- XVIII. ***Representative's Authority to Contract.*** By signing this contract, the representative of the **WRECKER CONTRACTOR** represents that he or she is duly authorized by the **WRECKER CONTRACTOR** to execute this contract, and that the **WRECKER CONTRACTOR** has agreed to be bound by all its provisions.

**IN WITNESS WHEREOF**, the parties have set their hands the day and year first above written.

Attest:

City of Wichita, KS

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Karen Sublett  
City Clerk

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Jeff Longwell  
Mayor

Approved as to Form:

Tow Service, Inc.

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Jennifer Magana  
City Attorney and Director of Law

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Owner Name

## **EXHIBIT A**

### **REVISED NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION PROGRAM REQUIREMENTS STATEMENT FOR CONTRACTS OR AGREEMENTS**

During the term of this contract, the contractor or subcontractor, Contractor or supplier of the City, by whatever term identified herein, shall comply with the following Non-Discrimination--Equal Employment Opportunity/Affirmative Action Program Requirements:

- A. During the performance of this contract, the contractor, subcontractor, Contractor or supplier of the City, or any of its agencies, shall comply with all the provisions of the Civil Rights Act of 1964, as amended: The Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11131; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and laws, regulations or amendments as may be promulgated thereunder.
- B. Requirements of the State of Kansas:
  - 1. The contractor shall observe the provisions of the Kansas Act against Discrimination (Kansas Statutes Annotated 44-1001, et seq.) and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, and age except where age is a bona fide occupational qualification, national origin or ancestry;
  - 2. In all solicitations or advertisements for employees, the contractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase to be approved by the "Kansas Human Rights Commission";
  - 3. If the contractor fails to comply with the manner in which the contractor reports to the "Kansas Human Rights Commission" in accordance with the provisions of K.S.A. 1976 Supp. 44-1031, as amended, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
  - 4. If the contractor is found guilty of a violation of the Kansas Act against Discrimination under a decision or order of the "Kansas Human Rights Commission" which has become final, the contractor shall be deemed to have breached the present contract, and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

5. The contractor shall include the provisions of Paragraphs 1 through 4 inclusive, of this Subsection B, in every subcontract or purchase so that such provisions will be binding upon such subcontractor or Contractor.
- C. Requirements of the City of Wichita, Kansas, relating to Non-Discrimination -- Equal Employment Opportunity/Affirmative Action Program Requirements:
1. The Contractor, supplier, contractor or subcontractor shall practice Non-Discrimination -- Equal Employment Opportunity in all employment relations, including but not limited to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The contractor, supplier, contractor or subcontractor shall submit an Equal Employment Opportunity or Affirmative Action Program, when required, to the Department of Finance of the City of Wichita, Kansas, in accordance with the guidelines established for review and evaluation;
  2. The Contractor, supplier, contractor or subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, supplier, contractor or subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, "disability, and age except where age is a bona fide occupational qualification", national origin or ancestry. In all solicitations or advertisements for employees the Contractor, supplier, contractor or subcontractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase;
  3. The Contractor, supplier, contractor or subcontractor will furnish all information and reports required by the Department of Finance of said City for the purpose of investigation to ascertain compliance with Non-Discrimination -- Equal Employment Opportunity Requirements. If the Contractor, supplier, contractor, or subcontractor fails to comply with the manner in which he/she or it reports to the City in accordance with the provisions hereof, the Contractor, supplier, contractor or subcontractor shall be deemed to have breached the present contract, purchase order or agreement and it may be canceled, terminated or suspended in whole or in part by the City or its agency; and further Civil Rights complaints, or investigations may be referred to the State;
  4. The Contractor, supplier, contractor or subcontractor shall include the provisions of Subsections 1 through 3 inclusive, of this present section in every subcontract, subpurchase order or subagreement so that such provisions will be binding upon each subcontractor, subcontractor or subsupplier.

5. If the contractor fails to comply with the manner in which the contractor reports to the Department of Finance as stated above, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

D. Exempted from these requirements are:

1. Those contractors, subcontractors, Contractors or suppliers who have less than four (4) employees, whose contracts, purchase orders or agreements cumulatively total less than five thousand dollars (\$5,000) during the fiscal year of said City are exempt from any further Equal Employment Opportunity or Affirmative Action Program submittal.
2. Those Contractors, suppliers, contractors or subcontractors who have already complied with the provisions set forth in this section by reason of holding a contract with the Federal government or contract involving Federal funds; provided that such contractor, subcontractor, Contractor or supplier provides written notification of a compliance review and determination of an acceptable compliance posture within a preceding forty-five (45) day period from the Federal agency involved.



**EXHIBIT B**  
**WRECKER FEES**

No additional charges will be levied against vehicles towed under this Agreement without the written authorization of the Chief of Police or his designee, or at the request of the owner. The following fees shall apply to all Police Impounds. For Light Duty Towing there will be no tow charge that shall exceed \$185 unless the vehicle requires up righting or winching.

1. Light Duty Towing: \$95 hook up fee plus \$4.00 per loaded mile. Additional Charges include: Up righting - \$45; Dolly Service - \$43; Winching - \$25 per one-fourth hour; Waiting Time - \$15 per one-fourth hour;
2. Storage: \$27 per day; heavy duty storage: \$50 per day per unit
3. Tarp Fee: \$15
4. Oil Dry: \$15
5. Lot Fee: \$15
6. Medium/Heavy Duty Towing & Recovery: \$250 per hour portal to portal
7. Heavy Duty Landoll: Specialized Low Boy Transport \$250 per hour portal to portal
8. Clean up that requires loader, bobcats, power brooms, forklifts, and/or extra man power to be added to any tow based on the actual cost plus basis of the service rendered plus 10%.
9. Wichita Police Department Processing Fee for Notices: \$30

Any Police Impound released to the owner of the vehicle will have a maximum storage of forty five (45) days.

City of Wichita  
City Council Meeting  
October 18, 2016

**TO:** Mayor and City Council Members

**SUBJECT:** State Office Building Budget Adjustment (District I)

**INITIATED BY:** Department of Public Works & Utilities

**AGENDA:** Consent

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**Recommendation:** Approve the budget adjustment for the State Office Building.

**Background:** The State of Kansas vacated the State Office Building in August 2015. During its occupancy, the State was responsible for maintenance of the property. Since that date, all maintenance has become the responsibility of the City of Wichita. Due to the fluctuations in occupancy, maintenance costs for the building have varied. While some funds were budgeted into specific expense areas, significant money was budgeted in reserves to account for unforeseen variances.

**Analysis:** Amounts budgeted for contractual items are insufficient to cover actual costs. The primary cause of the overages is the utilities expense, which has been significantly higher than anticipated due to occupancy continuing longer than expected. Additionally, there have been several unanticipated maintenance costs associated with building operations. Overages are anticipated to be as much as \$200,000 through the end of the year. There are sufficient funds available in budgeted reserves to fund the overage.

**Financial Considerations:** The budget adjustment will provide necessary expenditure authority to ensure compliance with the City's financial policies at year-end, by transferring money from reserves within this fund to cover contractals.

**Legal Considerations:** Budget adjustments over \$25,000 require approval by the City Council.

**Recommendation/Actions:** It is recommended that the City Council approve the budget adjustment and authorize the necessary signatures.

**Attachments:** None.

**City of Wichita  
City Council Meeting  
October 18, 2016**

**TO:** Mayor and City Council

**SUBJECT:** Pracht Wetlands Park Design Services (District V)

**INITIATED BY:** Department of Park & Recreation

**AGENDA:** Consent

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**Recommendation:** Approve the design contract.

**Background:** On September 1, 2015, the City Council approved funding for design and construction of enhancements at Pracht Wetlands Park. A U.S. Army Corps of Engineers (USACE) § 404 U.S. permit has been secured and drainage improvements are underway. Amenities approved by the USACE include a system of paths, boardwalks, viewing stations and educational material. A Request for Proposal (RFP) was issued and on May 6, 2016 and the City received six design and planning proposals. The Staff Screening and Selection Committee (SSSC) met on May 26, 2016 and short-listed three firms to interview for this project.

**Analysis:** RDG Planning & Design (RDG) was selected to provide design services for the development of plans for Pracht Wetlands. RDG has a quality team with extensive experience in sustainable ecosystems and wetlands. Compliance with the § 404 permit is one of the primary components of the Pracht Wetlands Park project and the SSSC determined that RDG will develop the best design in order to be in compliance with all local, state and federal regulations, as well as addressing the proper construction, operation and maintenance aspects of the future park. The RDG team is very qualified to do the project based upon past experience and the understanding from similar projects. The selection of the consultant is an important step for developing future plans for Pracht Wetlands Park. Once the selected consultant is under contract, important planning and design functions can begin.

**Financial Considerations:** A contract has been prepared with RDG for a cost not to exceed \$124,200. This includes a set fee of \$104,200 for design services and up to \$20,000 for survey fees, the extent of which will be determined during the design process. On September 1, 2015, the City Council approved funding for design and construction of enhancements at Pracht Wetlands Park.

**Legal Considerations:** The Law Department has reviewed and approved this contract as to form.

**Recommendation/Action:** It is recommended that the City Council approve the vendor selection, approve the contract and scope of services and authorize all necessary signatures.

**Attachments:** Design Agreement, Scope of Services.

## AGREEMENT FOR DESIGN SERVICES

THIS AGREEMENT, Made and entered into this \_\_\_\_ day of October, 2016,

BY AND BETWEEN

THE CITY OF WICHITA, KANSAS,  
A Municipal Corporation, hereinafter  
referred to as  
**"OWNER"**

AND

RDG IA Inc d/b/a RDG Planning & Design (RDG)  
A Corporation, hereinafter  
referred to as  
**"LANDSCAPE ARCHITECT"**

WHEREAS, the **OWNER** is authorized by law to employ consulting architects and engineers to assist in the plans, supplemental specifications (if required) and the estimates of costs of work for the PROJECT, defined below; and

WHEREAS, LANDSCAPE ARCHITECT was selected from competing proposers as offering OWNER the proposal representing the greatest benefit and value within the available budget, and

WHEREAS, the OWNER desires to have Design, Construction Documentation, and Construction Administration Services prepared for Pracht Wetlands Park hereinafter referred to as the "PROJECT"; and

WHEREAS, LANDSCAPE ARCHITECT wishes to provide professional services to the OWNER to do such evaluation, preparation of Design, Construction Documentation, and Construction Administration Services, and related services therefore:

NOW, THEREFORE, in consideration of the promises and covenants herein contained and to be performed, the parties agree as follows:

### **I. PURPOSE:**

The **OWNER** employs the **LANDSCAPE ARCHITECT**, which agrees to perform all necessary professional services hereinafter set forth in connection with the "PROJECT" of the City of Wichita, to develop Design, Construction Documentation, and Construction Administration Services for Pracht Wetlands Park, located at 29<sup>th</sup> Street and Maize Road, Wichita, Kansas.

### **II. BASIC SERVICES:**

The **LANDSCAPE ARCHITECT** shall render all landscape architectural services necessary as set out in **EXHIBIT "A"** a copy of which is attached hereto and which is incorporated herein by reference.

### **III. THE LANDSCAPE ARCHITECT AGREES**

- A. To provide the various technical and professional services and transportation to perform the tasks as outlined in the SCOPE OF SERVICES (Exhibit "A").
- B. To attend meetings with the **OWNER** and other local, State and Federal agencies as necessitated by the SCOPE OF SERVICES (Exhibit "A").

- C. To make available during regular office hours, all calculations, sketches and drawings such as the **OWNER** may wish to examine periodically during performance of this Agreement.
- D. To save and hold **OWNER** harmless against all damages and losses for injuries to persons or property caused by negligent acts, errors, or omissions of **LANDSCAPE ARCHITECT**, its employees, or subcontractors occurring in the performance of its professional services under this Agreement.
- E. To maintain books, documents, papers, accounting records and other evidence pertaining to costs incurred by **LANDSCAPE ARCHITECT** and, where relevant, to make such material available to the **OWNER**.
- F. To comply with Federal, State and local laws, ordinances and regulations applicable to the work, including Title VI of the Civil Rights Act of 1964, and to comply with the **OWNER'S** Affirmative Action Program as set forth in Exhibit "B" which is attached hereto and adopted by reference as though fully set forth herein.
- G. To accept compensation for the work herein described in such amounts and at such periods as provided in Article V and that such compensation shall be satisfactory and sufficient payment for all services rendered in connection with the tasks as outlined in the SCOPE OF SERVICES (Exhibit "A").
- H. To complete the services to be performed by **LANDSCAPE ARCHITECT** within the time allotted for the PROJECT in accordance with Paragraph VI, Time of Completion; EXCEPT that the **LANDSCAPE ARCHITECT** shall not be responsible or held liable for delays occasioned by the actions or inactions of the **OWNER** or other agencies, or for other unavoidable delays beyond the control of the **LANDSCAPE ARCHITECT**.
- I. In providing services under this Agreement, the **LANDSCAPE ARCHITECT** shall perform in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances at the same time and in the same or similar locality. The **LANDSCAPE ARCHITECT** makes no warranty, express or implied, as to its professional services rendered under this Agreement.
- J. **LANDSCAPE ARCHITECT** shall procure and maintain such insurance as will protect the **OWNER** from damages resulting from the negligent acts of the **LANDSCAPE ARCHITECT**, its officers, and employees in the performance of the professional services rendered under this Agreement. Such policy of insurance shall be in an amount not less than \$1,000,000.00. In addition, a Workman's Compensation and Employer's Liability Policy shall be procured and maintained. The liability limit shall be not less than:

Workman's Compensation - Statutory  
Employer's Liability - \$500,000 each occurrence

Further, a commercial general liability policy shall be procured and maintained by the **LANDSCAPE ARCHITECT** that shall be written in a comprehensive form and shall protect **LANDSCAPE ARCHITECT** and the **OWNER**, including its employees, as certificate holders, against all claims arising from injuries to persons (other than **LANDSCAPE ARCHITECT'S** employees) or damage to property of the **OWNER** or others arising out of any negligent act or omission of **LANDSCAPE ARCHITECT**, officers, or employees in the performance of the professional services under this Agreement. The liability limit shall not be less than \$500,000.00 per occurrence for bodily injury, death

and property damage. Satisfactory Certificates of Insurance on standard ACORD forms, to include NAIC codes shall be filed with the **OWNER** before the time **LANDSCAPE ARCHITECT** starts any work under this Agreement.

- K. To designate a Project Manager for the coordination of the work that this Agreement requires to be performed. The **LANDSCAPE ARCHITECT** agrees to advise the **OWNER**, in writing, of the person designated as Project Manager not later than five (5) days following issuance of the notice to proceed on the work required by this Agreement. The **LANDSCAPE ARCHITECT** shall also advise the **OWNER** of any changes in the person designated Project Manager. Written notification shall be provided to the **OWNER** for any changes exceeding one week in length of time.

The designated Project Manager for **LANDSCAPE ARCHITECT** shall coordinate all aspects of this Project through the **OWNER'S** Project Manager. Any requests from any other staff agency, which would affect the **LANDSCAPE ARCHITECT'S** time or expense relative to this Project, **MUST** be approved by the **OWNER'S** Project Manager.

#### **IV. THE OWNER AGREES:**

- A. To furnish all available data pertaining to the PROJECT now in the **OWNER'S** files at no cost to the **LANDSCAPE ARCHITECT**. Confidential material so furnished will be kept confidential by the **LANDSCAPE ARCHITECT**. **LANDSCAPE ARCHITECT** is entitled to rely upon information supplied by the **OWNER**. **LANDSCAPE ARCHITECT** has the right to use such information, requirements, reports, data, surveys and instructions in performing its services and **LANDSCAPE ARCHITECT** is entitled to rely upon the accuracy and completeness of such information. **LANDSCAPE ARCHITECT** shall not rely on any information supplied by **OWNER** that is inconsistent with the survey or geotechnical report required of **LANDSCAPE ARCHITECT** below.
- B. To provide standards as required for the PROJECT; however, reproduction costs are the responsibility of the **LANDSCAPE ARCHITECT**, except as specified in Exhibit "A".
- C. To pay the **LANDSCAPE ARCHITECT** for his services in accordance with the requirements of this Agreement.
- D. To provide the right-of-entry for **LANDSCAPE ARCHITECT'S** personnel in performing field surveys and observations.
- E. To designate a Project Manager for the coordination of the work that this Agreement requires to be performed. The **OWNER** agrees to advise the **LANDSCAPE ARCHITECT** in writing, of the person designated as Project Manager with the issuance of the notice to proceed on the work required by this Agreement. The **OWNER** shall also advise the **LANDSCAPE ARCHITECT** of any changes in the person designated Project Manager. Written notification shall be provided to the **LANDSCAPE ARCHITECT** for any changes exceeding one week in length of time.
- F. To examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by **LANDSCAPE ARCHITECT** in a timely fashion.

#### **V. PAYMENT PROVISIONS:**

The **OWNER** agrees to pay the **LANDSCAPE ARCHITECT** for services rendered under this Agreement and as specifically detailed in **EXHIBIT "A"**, a total fee established as follows:

- A. For the complete Design, Construction Documentation, and Construction Administration Services identified in SCOPE OF SERVICES, Exhibit "A" a single stipulated lump sum fee of One Hundred Thirty-One Thousand Four Hundred Dollars and No Cents (\$131,400.00) which shall constitute complete compensation for the services. This inclusive fee, which includes all reimbursable expenses, and shall be payable in monthly installments, and in proportion to the services performed, payable upon the satisfactory performance of the service.
- B. Payments on undisputed fees are payable to the **LANDSCAPE ARCHITECT** within thirty (30) working days from the date of receipt of invoice. If any invoice is outstanding for more than thirty (30) working days from the date due (not including fees in dispute), the **LANDSCAPE ARCHITECT** shall have the right, in addition to any and all other rights provided, to refuse to render further services to the **OWNER** and such act or acts shall not be deemed a breach of this Agreement. Continued performance and/or completion of work by the **LANDSCAPE ARCHITECT** under this Agreement are contingent upon payment of fees by the **OWNER**.
- C. When requested by the **OWNER**, the **LANDSCAPE ARCHITECT** will enter into an additional Supplemental Agreement for additional services related to the PROJECT such as, but not limited to:
  - 1. **LANDSCAPE ARCHITECT** serving as a witness for the **OWNER** in any litigation, administrative hearing, and other legal proceedings related to the PROJECT.
  - 2. Additional design services not covered by the scope of this Agreement.
  - 3. Observation and administration related to the PROJECT but not encompassed in this Agreement.
  - 4. A major change in the SCOPE OF SERVICES for the PROJECT.
- D. If additional work should be necessary, the **LANDSCAPE ARCHITECT** will be given written notice by the **OWNER** along with a request for an estimate of the increase necessary in the not-to-exceed fee for performance of such additions. No additional work shall be performed nor shall additional compensation be paid except based on a Supplemental Agreement duly entered into by the parties.
- E. If services are rendered by the **LANDSCAPE ARCHITECT** for the PROJECT or portions of the PROJECT, but the **OWNER** elects to cancel the PROJECT or portions thereof the **LANDSCAPE ARCHITECT** shall be compensated at an amount in proportion to the services actually rendered as stated in Paragraph A above that have been completed at the time of the notice of cancellation or termination.

#### **VI. TIME OF COMPLETION:**

The **LANDSCAPE ARCHITECT** agrees to complete all Phases up to and including construction documents of this PROJECT as follows:

- A. One hundred twenty (120) working days from the date of approval of the Agreement

pending availability of **OWNER** and staff.

- B. The **OWNER** agrees to cooperate with the **LANDSCAPE ARCHITECT** in considering drawings and data submitted and to make necessary decisions promptly to facilitate completion in the stipulated time, and the **OWNER** agrees to furnish promptly to the **LANDSCAPE ARCHITECT** upon written request any approvals and instructions required to be given by the **OWNER** to the **LANDSCAPE ARCHITECT** under the terms of the Agreement.

## **VII. REVISIONS OF PLANS:**

- A. If the **OWNER'S** budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid or negotiated proposal, the **OWNER** shall:
  - 1. give written approval of an increase in the budget for the Cost of the Work;
  - 2. authorize rebidding or renegotiating of the Project within a reasonable time;
  - 3. terminate in accordance with Section VIII A.;
  - 4. in consultation with the **LANDSCAPE ARCHITECT**, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or
  - 5. implement any other mutually acceptable alternative.
- B. Due to uncertainty in the availability of construction labor and materials and the resulting impact on inflation and construction costs, the **LANDSCAPE ARCHITECT** cannot and does not warrant or represent that the Cost of the Work will be within the **OWNER'S** budget for the Cost of the Work. If the **OWNER** chooses to proceed under Sections A.1, A.4, or A.5 of this Article VII, the **LANDSCAPE ARCHITECT**, as Additional Services, shall modify the Construction Documents as necessary to comply with the **OWNER'S** budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section A.1 of this Article VII. The **LANDSCAPE ARCHITECT'S** modification of the Construction Documents shall be the limit of the **LANDSCAPE ARCHITECT'S** responsibility under this Article VII. The **LANDSCAPE ARCHITECT** shall be entitled to compensation in accordance with this Agreement for all services performed (including, but not limited to, redesigning, redrawing, rebidding, and renegotiating) whether or not construction is commenced.

## **VIII. THE PARTIES HERETO MUTUALLY AGREE:**

- A. That the right is reserved to the **OWNER** to terminate this Agreement, upon fourteen days prior written notice, in the event the PROJECT is to be abandoned or indefinitely postponed, or because of the **LANDSCAPE ARCHITECT'S** inability to proceed with the work, or because the services of the **LANDSCAPE ARCHITECT** are unsatisfactory; PROVIDED, however, that in any case the **LANDSCAPE ARCHITECT** shall be paid the reasonable value of the services rendered up to the time of termination on the basis of the provisions of this Agreement, in no case shall payment be more than the **LANDSCAPE ARCHITECT'S** actual costs plus a reasonable fee for profit based upon a fixed percentage of the **LANDSCAPE ARCHITECT'S** actual costs. The **LANDSCAPE ARCHITECT** may terminate this Agreement upon giving the **OWNER** 14 days prior written notice for breach by the **OWNER** of any material term, including but not limited to payment terms.



- B. That pertinent final drawings and final documents pertaining to the PROJECT shall become the property of the **OWNER** upon completion or termination of the **LANDSCAPE ARCHITECT'S** services and payment in full of monies due the **LANDSCAPE ARCHITECT**, in accordance with this Agreement. The **OWNER** shall not re-use or make any modification of the plans and specifications for a different project without the prior written authorization of the **LANDSCAPE ARCHITECT**.
- C. That the services to be performed by the **LANDSCAPE ARCHITECT** under the terms of this Agreement are personal and cannot be assigned, sublet or transferred without specific consent of the **OWNER**. The **OWNER** shall not assign or transfer rights or interest in this Agreement without specific consent of the **LANDSCAPE ARCHITECT**.
- D. In the event of unavoidable delays in the progress of the work contemplated by this Agreement, reasonable extensions in the time allotted for the work will be granted by the **OWNER**, provided, however, that the **LANDSCAPE ARCHITECT** shall request extensions, in writing, giving the reasons therefore.
- E. It is further agreed that this Agreement shall be binding upon the parties hereto and their successors and assigns.
- F. Neither the **OWNER'S** review, approval or acceptance of, nor payment for, any of the work or services required to be performed by the **LANDSCAPE ARCHITECT** under this Agreement shall be construed to operate as a waiver of any right under this Agreement or any cause of action arising out of the performance of this Agreement.
- G. The rights and remedies of the **OWNER** and the **LANDSCAPE ARCHITECT** provided for under this Agreement are in addition to any other rights and remedies provided by law.
- H. It is specifically agreed between the parties executing this Agreement, that it is not intended by any of the provisions of any part of this Agreement to create in the public or any member thereof third party beneficiary rights hereunder, or to authorize anyone not a party to this Agreement to maintain a suit for damages pursuant to the terms or provisions of this Agreement.
- I. Unless otherwise stipulated in this Agreement, all subcontractors retained to assist **LANDSCAPE ARCHITECT** in performing his duties will be paid by the **LANDSCAPE ARCHITECT**.
- J. The **LANDSCAPE ARCHITECT** agrees to engage as independent contractors structural, mechanical, civil, and electrical engineers, if necessary, as determined by the **LANDSCAPE ARCHITECT** and **OWNER** jointly, for design and analysis and the **LANDSCAPE ARCHITECT** **agrees** to pay the fees as contracted for with the individual engineers for such services. These fees are not reimbursable expenses.
- K. Special Consultants or Subcontractors are those who provide services other than those provided by the **LANDSCAPE ARCHITECT**. If it is requested that any Special Consultants or Subcontractors be retained on the **OWNER'S** behalf, their charges will be paid separately and directly by the **OWNER**. Invoicing and payment shall be arranged separately between the **OWNER** and the Special Consultants or Subcontractors.
- L. If a firm or firms are separately engaged by the **OWNER**, the **OWNER** agrees that the

LANDSCAPE ARCHITECT shall have no responsibility for any portion of the Project designed/performed by other firms engaged by the OWNER. The LANDSCAPE ARCHITECT shall not be required to check or verify other firms' construction documents or reports and shall be entitled to rely on the accuracy and completeness thereof, as well as the compliance of such documents or reports with applicable laws, codes, statutes, ordinances and regulations.

- M. It is further agreed that this Agreement shall be governed by the laws of the State of Kansas, with venue in any court of record in Sedgwick County Kansas.
- N. Unless otherwise provided in this Agreement, the **LANDSCAPE ARCHITECT** and employees, or subcontractors shall have no responsibility for the discovery, presence, handling, removal, disposal of or exposure of persons to hazardous materials in any form at the Project site, unless such hazardous materials are brought to the Project site by the **LANDSCAPE ARCHITECT** or its employees, agents or subcontractors, including but not limited to asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic substances. In the event that the **LANDSCAPE ARCHITECT** or any other party encounters asbestos or hazardous or toxic materials indigenous to the job site, or should it become known in any way that certain materials may be present at the job site or any adjacent areas that may affect the performance of the **LANDSCAPE ARCHITECT'S** services, the **LANDSCAPE ARCHITECT** may, at its option and without liability for consequential or any other damages, suspend performance of services on the **PROJECT** until the **OWNER or other responsible party** retains appropriate specialist consultants or contractors to identify, abate and/or remove the asbestos or hazardous or toxic material, and warrant that the job site is in full compliance with applicable laws and regulations.
- O. The **LANDSCAPE ARCHITECT** and **OWNER** waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages.

(Signatures appear on the following page)

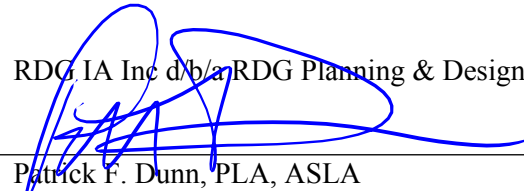
IN TESTIMONY WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

CITY OF WICHITA, KANSAS

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Jeff Longwell  
Mayor

RDG IA Inc d/b/a RDG Planning & Design



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Patrick F. Dunn, PLA, ASLA  
Principal

ATTEST:

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Karen Sublett  
City Clerk

APPROVED AS TO FORM:

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Jennifer Magana  
Director of Law

## **EXHIBIT "B"**

### **REVISED NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION PROGRAM REQUIREMENTS STATEMENT FOR CONTRACTS OR AGREEMENTS**

During the term of this Agreement, the contractor or subcontractor, vendor or supplier of the City, by whatever term identified herein, shall comply with the following Non-Discrimination--Equal Employment Opportunity/Affirmative Action Program Requirements:

- A. During the performance of this Agreement, the contractor, subcontractor, vendor or supplier of the City, or any of its agencies, shall comply with all the provisions of the Civil Rights Act of 1964, as amended: The Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11131; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and laws, regulations or amendments as may be promulgated thereunder.
- B. Requirements of the State of Kansas:
  - 1. The contractor shall observe the provisions of the Kansas Act against Discrimination (Kansas Statutes Annotated 44-1001, et seq.) and shall not discriminate against any person in the performance of work under the present Agreement because of race, religion, color, sex, disability, and age except where age is a bona fide occupational qualification, national origin or ancestry;
  - 2. In all solicitations or advertisements for employees, the contractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase to be approved by the "Kansas Human Rights Commission";
  - 3. If the contractor fails to comply with the manner in which the contractor reports to the "Kansas Human Rights Commission" in accordance with the provisions of K.S.A. 1976 Supp. 44-1031, as amended, the contractor shall be deemed to have breached this Agreement and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
  - 4. If the contractor is found guilty of a violation of the Kansas Act against Discrimination under a decision or order of the "Kansas Human Rights Commission" which has become final, the contractor shall be deemed to have breached the present Agreement, and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
  - 5. The contractor shall include the provisions of Paragraphs 1 through 4 inclusive, of this Subsection B, in every subcontract so that such provisions will be binding upon such subcontractor.
- C. Requirements of the City of Wichita, Kansas, relating to Non-Discrimination -- Equal Employment Opportunity/Affirmative Action Program Requirements:
  - 1. The vendor, supplier, contractor or subcontractor shall practice Non-Discrimination -- Equal Employment Opportunity in all employment relations, including but not limited to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The vendor, supplier, contractor or subcontractor shall submit an Equal Employment Opportunity or Affirmative Action Program, when required, to the Department of Finance of the City of Wichita, Kansas, in accordance with the guidelines established for

review and evaluation;

2. The vendor, supplier, contractor or subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the vendor, supplier, contractor or subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, "disability, and age except where age is a bona fide occupational qualification", national origin or ancestry. In all solicitations or advertisements for employees the vendor, supplier, contractor or subcontractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase;
3. The vendor, supplier, contractor or subcontractor will furnish all information and reports required by the Department of Finance of said City for the purpose of investigation to ascertain compliance with Non-Discrimination -- Equal Employment Opportunity Requirements. If the vendor, supplier, contractor, or subcontractor fails to comply with the manner in which he/she or it reports to the City in accordance with the provisions hereof, the vendor, supplier, contractor or subcontractor shall be deemed to have breached the present Agreement, purchase order or agreement and it may be canceled, terminated or suspended in whole or in part by the City or its agency; and further Civil Rights complaints, or investigations may be referred to the State;
4. The vendor, supplier, contractor or subcontractor shall include the provisions of Subsections 1 through 3 inclusive, of this present section in every subcontract, subpurchase order or subagreement so that such provisions will be binding upon each subcontractor, subvendor or subsupplier.
5. If the contractor fails to comply with the manner in which the contractor reports to the Department of Finance as stated above, the contractor shall be deemed to have breached this Agreement and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

D. Exempted from these requirements are:

1. Those contractors, subcontractors, vendors or suppliers who have less than four (4) employees, whose Agreements, purchase orders or agreements cumulatively total less than five thousand dollars (\$5,000) during the fiscal year of said City, are exempt from any further Equal Employment Opportunity or Affirmative Action Program submittal.
2. Those vendors, suppliers, contractors or subcontractors who have already complied with the provisions set forth in this section by reason of holding a Agreement with the Federal government or contract involving Federal funds; provided that such contractor, subcontractor, vendor or supplier provides written notification of a compliance review and determination of an acceptable compliance posture within a preceding forty-five (45) day period from the Federal agency involved.

**Pracht Wetlands Park  
City of Wichita, Kansas  
2016.465.00  
September 6, 2016**

## **SCOPE OF SERVICES**

### **PROJECT UNDERSTANDING**

The Pracht Wetlands are located at 29<sup>th</sup> Street and Maize Road in Wichita, Kansas. This property owned by the City of Wichita is a unique wildlife area, comprised of both natural and manmade wetlands with a small public access off 29<sup>th</sup> Street. RDG Planning & Design (RDG) has been hired by the City of Wichita to develop design plans and construction documents for the first phase of this project. The first phase of construction is to include a trailhead and park entry, trailhead kiosk, nature playground, trails, and boardwalks. This estimated project budget for construction is \$842,000.

### **PROJECT SUPPORT**

The RDG team will include bi-weekly coordination meetings with City of Wichita Parks and Recreation staff to either meet via Zoom (web conferencing) or in person. These meetings are helpful to keep the project moving forward without delay. Next steps, complexity of permits, utilities, developer and neighbor coordination, and design direction are all issues that can be addressed during these meetings.

The RDG team will assist with the writing of project-related articles and progress reports as content to be shared via social media and/or published on existing websites or monthly newsletters. We have assumed three articles/reports as part of this scope and budget.

### **TASK ONE: KICK-OFF MEETING AND SCHEDULING**

With the notice to proceed, the RDG team will conduct a project kick-off meeting with the City of Wichita Parks and Recreation staff to clarify their expectations, clarify the scope of work, review design criteria and standards, and obtain background information. We will review and clarify the project goals. In addition, we will establish the calendar of meetings and milestones for the project.

**Permitting** – Also at this meeting, we would clarify permits that will be required for the project, identify those permit timelines, and assign responsibility to procure these permits. Permits that may be required including USACE 404 permit, Division of Water Resources permit, Kansas Department of Wildlife and Parks permit, and coordination of the archaeological review for the USACE. These permits listed above and others that may yet be identified **have not been included** in the budget fee proposal and will need to be negotiated. We have included the preparation of the SWIPP plan and the NPDES permit as well as assistance with the building permit, however the actual permit fees are an additional cost to the City and are not included in this scope. Utility contacts will be identified so that inclusion of utility companies and/or entities can be started early in the design process.

### **TASK TWO: SCHEMATIC DESIGN – 30% complete**

The RDG team, along with key City of Wichita Parks and Recreation staff, will conduct a site visit of the Pracht Wetlands looking carefully at locations that development of facilities is planned. We will take additional photos and notes, talk about restoration impacts on the project, and understand more fully the subtleties found on the site. The RDG team will include one biologist from AES, the landscape architecture team, artist, and civil engineer. In addition to City staff, we will include the USACE representatives to ensure that the design process and construction documents meet the requirements of the 404 wetland permit. As part of this effort, AES will conduct a high-level review of the protection, mitigation, and restoration

measures being implemented at the park. This includes determining the required performance standards and wetland monitoring protocol necessary to receive final approval by the USACE after five years. It also includes a review of species lists, hydrological zones, and other details of native species planting.

The RDG team will develop conceptual design alternative plans and sketches based on City of Wichita Parks and Recreation staff and stakeholder input.

The RDG team will conduct one on-site design charrette for feedback and interaction between the design team and City of Wichita Parks and Recreation staff. This may be a two or three-day concentration of effort, combining the site visit and stakeholder conversations with design of alternatives. This design effort would include RDG artist, AES biologist, CFS engineer, and RDG landscape architects. We will discuss materials, forms, directions, theme ideas, and general overall design as well as focus on each of the primary use areas. At the conclusion of this design charrette, we will review the alternative concepts and narrow the solutions to a preferred direction.

For stakeholder conversations, we will want to meet with some of the organizations and groups that have been involved overtime, including the Sierra Club, Pracht Wetland Task Force, or other organizations that the City may suggest. We may also want to conduct a neighborhood meeting with adjacent landowners.

We will refine the master plan diagrams that the City has produced to a real working site plan. We will have illustrations and sketches for integrated art components.

During this phase we will also begin to define the architectural character of the site elements, including the materials, form, and character of the picnic shelters, restrooms, monument sign, kiosks, and bridges. The City of Wichita Parks and Recreation team may have a good understanding of the right direction or we may need to do a little bit of visual listening with City of Wichita Parks and Recreation staff and the advisory committee. Regardless, the idea is to gain consensus on the look and feel of these structures so park aesthetics are consistent and right for this area of Wichita.

**Topographic Survey and Geotechnical Services** – The City of Wichita has some data that may be useful in the creation of a topographic survey. As we wrap up the Schematic Design Phase and have better defined the extents of the project trails, boardwalks, fencing, and signage we will get the topographic survey started and completed as soon as possible. We will also coordinate and get the geotechnical investigations underway. We have provided an allowance for the testing, field work, and preparation of a topographic survey and necessary geotechnical services in the cost of services. These services will be provided on a time and materials basis and the City of Wichita will not be charged for unused time or allowance. The survey will use existing benchmarks and datum to incorporate and reference project information into existing plans and maps. Also, utilities will be located in the field and marked by utility owners through “One-Call” services and County staff.

**Integrated Art and Interpretive Plan** – As part of our schematic design package, the RDG team will work with City staff and staff from Wichita’s Great Plains Nature Center to develop five themes and ecological details related to the Great Plains Wetlands. These themes, ecological details, and design sketches produced during the design charrette will be incorporated as a rough framework plan into the schematic design presentation. Final design and fabrication of these elements and components are not included in this scope and are additional services.

### **TASK THREE: DESIGN DEVELOPMENT – 60% complete**

With a schematic level sketch design for each of the park components approved by park staff, we will begin to place the project into a set of construction documents. By the end of this design development phase, the RDG team will provide an opinion of probable costs and present the design development plans to City of Wichita Parks and Recreation staff. These plans will be 60% complete from the full construction document package. Plans will include:

- Grading and drainage plan
- Sediment and erosion control plan
- Site layout plans for pavements and structures



- Enlargement plans for necessary areas including trailhead kiosk, play area, boardwalk, bridge area, and viewing areas
- Shelter plan and elevations
- Utility plan
- Revegetation and planting plan with details
- Mechanical and electrical plans
- Some critical details
- Integrated art concepts
- Specifications in outline format
- Probable construction cost opinion

RDG will present this level of plan to City Council at a workshop session and to the City of Wichita Design Council. This presentation will include a power point presentation of the concept and design.

#### **TASK FOUR: CONSTRUCTION DOCUMENTATION PACKAGE – 100% complete**

With approvals in hand, the RDG team will prepare construction documents and opinion of probable construction cost to the 90% complete stage. The RDG team will prepare updated construction documents and meet with the City of Wichita Parks and Recreation staff for approval and comments.

When the documents are 100% complete, a final construction document package and final opinion of probable cost will be presented to the City of Wichita Parks and Recreation staff for review. The construction document package will include:

- Grading and drainage plan
- Sediment and erosion control plan
- Site layout plans for pavements and structures
- Enlargement plans for necessary areas including trailhead kiosk, play area, boardwalk, bridge area, and viewing areas
- Shelter plan and elevations
- Utility plan
- Revegetation and planting plan with details
- Mechanical and electrical plans
- Some critical details
- Specifications in outline format
- Probable construction cost opinion

Project plans will meet current codes and be in compliance with Americans with Disabilities Act.

#### **TASK FIVE: BIDDING ASSISTANCE**

The RDG team will provide clarification throughout the bidding period and assist with the bid evaluation and value engineering. We will hold a pre-bid meeting, participate in the bid opening and evaluation, and prepare and administer the construction contracts.

#### **TASK SIX: CONSTRUCTION OBSERVATION AND PROJECT CLOSEOUT**

The RDG team recognizes that providing timely services during construction is essential throughout the construction management period. By scheduling regularly convened progress meetings, timely action on shop drawing review, special product pre-installation meetings, and regular site observation visits, we manage this portion of the project effectively. The RDG team will provide inspections at an appropriate interval, provide quantity review and pay application review, conduct a final walk through with the staff and contractor, prepare a punch list, and assist with project closeout. Together, the RDG team and the City will work to see that construction meets the quality of the design.





Full resident observation is not included in this proposal. Bi-weekly progress meetings may suffice for this project, with more frequent visits for short periods of time with sensitive construction issues. The RDG team will attend the regular progress meetings. In this way, the design intent and focus on detail will be consistent throughout the construction phase. For the purposes of this budget fee we have assumed a construction period of seven months with a total of 18 site visits. CFS will assist with construction observation. No construction staking is included in this scope of services, however Ruggles and Bohm is available to provide construction staking as an additional service.

#### **TASK SEVEN: COMPILE DRAWINGS**

The RDG team will finally compile and provide to City of Wichita Parks and Recreation digital media documents of construction plans and documents.

#### **Cost of Professional Services**

Project Support	\$ 2,600.00
Kickoff Meeting and Scheduling	\$ 8,400.00
Schematic Design	\$25,000.00
Design Development	\$18,000.00
Construction Documents	\$16,700.00
Bidding Assistance	\$ 5,000.00
Construction Administration	\$28,500.00
Total cost	\$104,200.00
Topographic Survey and Geotechnical allowance	\$20,000.00
	\$124,200.00

#### **Budget Exclusions**

- Permit fees to be paid by the City.
- Reimbursable expenses are in addition and will be provided without markup. Estimated reimbursable expenses are \$7,200.00.
- If the project budget is expanded additional services will be negotiated.



**SECOND READING ORDINANCES FOR OCTOBER 18, 2016 (FIRST READ  
OCTOBER 11, 2016)**

a. Ordinance No. 50-341

AN ORDINANCE CREATING SECTION 2.12.640 OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO THE WICHITA PUBLIC BUILDING COMMISSION, AND REPEALING THE ORIGINAL OF SAID SECTION

b. Ordinance No. 50-342

AN ORDINANCE CHANGING THE ZONING CLASSIFICATIONS OR DISTRICTS OF CERTAIN LANDS LOCATED IN THE CITY OF WICHITA, KANSAS, UNDER THE AUTHORITY GRANTED BY THE WICHITA-SEDGWICK COUNTY UNIFIED ZONING CODE, SECTION V-C, AS ADOPTED BY SECTION 28.04.010, AS AMENDED.

c. Ordinance No. 50-343

AN ORDINANCE CHANGING THE ZONING CLASSIFICATIONS OR DISTRICTS OF CERTAIN LANDS LOCATED IN THE CITY OF WICHITA, KANSAS, UNDER THE AUTHORITY GRANTED BY THE WICHITA-SEDGWICK COUNTY UNIFIED ZONING CODE, SECTION V-C, AS ADOPTED BY SECTION 28.04.010, AS AMENDED.

d. Ordinance No. 50-344

AN ORDINANCE CHANGING THE ZONING CLASSIFICATIONS OR DISTRICTS OF CERTAIN LANDS LOCATED IN THE CITY OF WICHITA, KANSAS, UNDER THE AUTHORITY GRANTED BY THE WICHITA-SEDGWICK COUNTY UNIFIED ZONING CODE, SECTION V-C, AS ADOPTED BY SECTION 28.04.010, AS AMENDED.

City of Wichita  
City Council Meeting  
October 18, 2016

**TO:** Mayor and City Council

**SUBJECT:** VAC2016-00032 - Request to Vacate a Utility Easement Referenced in the Platorr's Text on Property Generally Located on the East Side of North Hydraulic Avenue, North of East Central Avenue (District I)

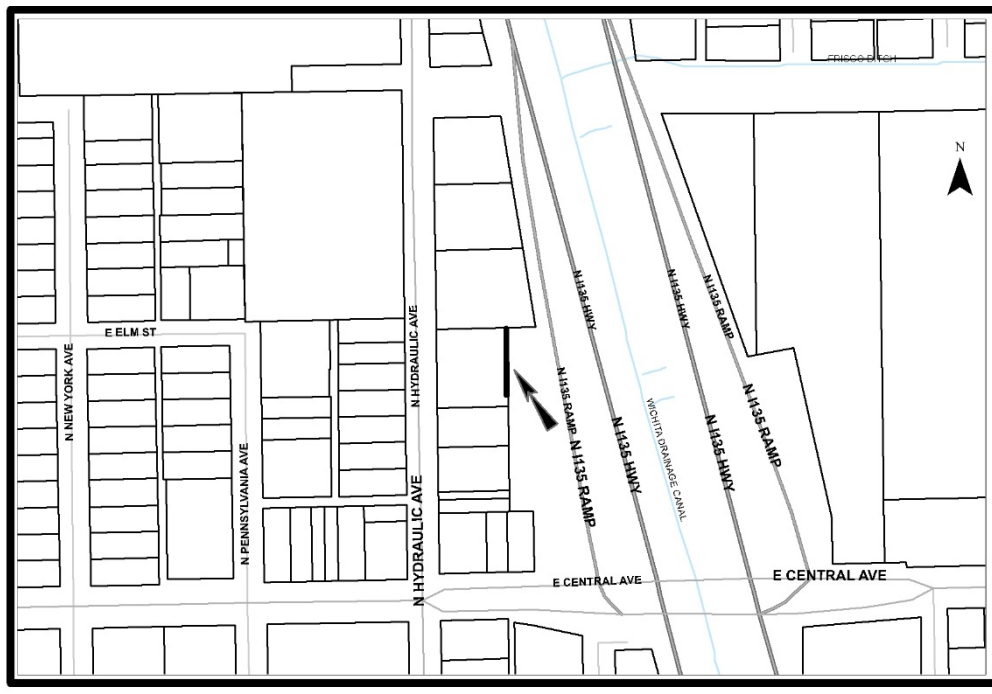
**INITIATED BY:** Metropolitan Area Planning Department

**AGENDA:** Planning (Consent)

---

**Staff Recommendation:** Staff recommends approval of the vacation request.

**MAPC Recommendation:** The Metropolitan Area Planning Commission recommends approval of the vacation request (10-0).



**Background:** The applicant proposes to vacate a utility easement referenced in the platorr's text located in the east five feet of Lots 25, 27, 29, 31 and the north 10 feet of the east five feet of Lot 33, Ratliffe's Addition for the erection of a fence/wall and a portion of a new building. A sewer line is located within the subject easement and the applicant has submitted a private sewer project for its abandonment and installation of a manhole. The applicant submitted a Restrictive Covenant binding and tying the subject lots together to be used as one undivided parcel. The Ratliffe's Addition was recorded with the Register of Deeds on February 16, 1924.

**Analysis:** The Metropolitan Area Planning Commission (MAPC) voted (10-0) to approve the vacation request. No one spoke in opposition to this request at the MAPC's advertised public hearing or its Subdivision Committee meeting. No written protests have been filed.

**Financial Considerations:** All improvements are to City standards and at the applicant's expense.

**Legal Considerations:** The Law Department has reviewed and approved the Vacation Order and Restrictive Covenant as to form. The original Vacation Order and Restrictive Covenant will be recorded with the Register of Deeds.

**Recommendation/Actions:** It is recommended that the City Council follow the recommendation of the Metropolitan Area Planning Commission and approve the Vacation Order and authorize the necessary signatures.

**Attachments:** Restrictive Covenant  
Vacation Order

**IN THE MATTER OF THE VACATION OF A  
UTILITY EASEMENT REFERENCED IN THE  
PLATTOR'S TEXT**

**VAC2016-00032**

## MORE FULLY DESCRIBED BELOW

NOW on this 18<sup>th</sup> day of October 2016, comes on for hearing the petition for vacation filed by Timothy McGinty, Jr. (owner), praying for the vacation of the following described utility easement as referenced in the plattor's text, to-wit:

The City Council, after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, makes the following findings:

1. That due and legal notice has been given by publication, as required by law, in The Wichita Eagle on July 28, 2016 which was at least 20 days prior to the public hearing.
2. No private rights will be injured or endangered by the vacation of the described utility easement and the public will suffer no loss or inconvenience thereby.
3. In justice to the petitioner(s), the prayer of the petition ought to be granted.
4. No written objection to said vacation has been filed with the City Clerk by any owner or adjoining owner who would be a proper party to the petition.

5. The vacation of the described utility easement should be approved.

IT IS, THEREFORE, BY THE CITY COUNCIL, on this 18<sup>th</sup> day of October, 2016, ordered that the above-described utility easement is hereby vacated. IT IS FURTHER ORDERED that the City Clerk shall send this original Vacation Order to the Register of Deeds of Sedgwick County.

---

Jeff Longwell, Mayor

ATTEST:

---

Karen Sublett, City Clerk

Approved as to Form:

---

Jennifer Magana, City Attorney and Director of Law

City of Wichita  
City Council Meeting  
October 18, 2016

**TO:** Mayor and City Council

**SUBJECT:** A16-03 - Request by the City of Wichita to Annex Cowskin Creek Drainage Right-of-Way Generally Located South of West Maple Street, Approximately One-Quarter Mile East of South Maize Road (District IV)

**INITIATED BY:** Metropolitan Area Planning Department

**AGENDA:** Planning (Consent)

---

**Recommendation:** Approve the annexation request.

**Background:** The City of Wichita is requesting to annex Cowskin Creek drainage right-of-way totaling approximately 25.33 acres of land generally located south of West Maple Street, approximately one-quarter mile east of South Maize Road. The annexation area is bordered by property located within the City of Wichita's incorporated area to the north, south, and west.

**Analysis:**

**Land Use and Zoning:** The annexation area consists of approximately 25.33 acres zoned RR Rural Residential and SF-20 Single-Family Residential and was condemned by the City of Wichita as drainage right-of-way for Cowskin Creek. The adjacent property to the north is zoned SF-5 Single-Family Residential and is developed with a golf course. The adjacent property to the south is zoned SF-5 Single-Family Residential and is developed with a single-family residence. The adjacent property to the east is zoned RR Rural Residential and is a ranch. The adjacent properties to the west are zoned "SF-5" Single-Family and are partially developed with single-family residences and partially Cowskin Creek drainage right-of-way.

**Public Services:** The annex area is Cowskin Creek drainage right-of-way maintained by the City of Wichita.

**Street System:** Access to the annexation area is from South Seville Avenue, a paved local street that abuts the annexation area on the east.

**Public Safety:** Fire protection is currently provided to the area on the basis of a first-responder agreement between the City and County, and that service will continue following annexation. The nearest City station is Fire Station No. 17 at 10651 West Maple Street. Upon annexation, police protection will be provided to the area by the Patrol West Bureau of the Wichita Police Department, headquartered at 661 North Elder Street.

**Parks:** The nearest park is Buffalo Park at 10201 West Hardtner Avenue, located approximately one-half northwest of the subject property.

**School District:** The annexation property is part of Unified School District 265 (Goddard School District). Annexation will not change the school district.

**Comprehensive Plan:** The proposed annexation is consistent with the Wichita-Sedgwick County Comprehensive Plan. The annexation property falls within the Wichita 2035 Urban Growth Area as shown in the Plan.

**Financial Considerations:** The Cowskin Creek drainage right-of-way is exempt from property taxes.

**Legal Considerations:** The property is eligible for annexation under K.S.A. 12-517, *et seq.* The annexation ordinance has been reviewed by the Law Department and approved as to form.

**Recommendations/Actions:** It is recommended that the City Council approve the annexation request, place the ordinance on first reading, authorize the necessary signatures and instruct the City Clerk to publish the ordinance after approval on second reading.

**Attachments:** Map Sheet  
Ordinance



(15004) PUBLISHED IN THE WICHITA EAGLE ON OCTOBER 28, 2016

ORDINANCE NO. 50-346

AN ORDINANCE INCLUDING AND INCORPORATING CERTAIN BLOCKS, PARCELS, PIECES AND TRACTS OF LAND WITHIN THE LIMITS AND BOUNDARIES OF THE CITY OF WICHITA, KANSAS. (A16-03)

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION 1. The governing body, under the authority of K.S.A. 12-517, et seq, hereby annexes the following blocks, parcels, pieces and tracts of land and they are hereby included and brought within the corporate limits of the City of Wichita, Kansas and designated as being part of City Council District IV:

A parcel of land lying in the Northwest Quarter of Section 29, Township 27 South, Range 1 West of the Sixth Principal Meridian, Sedgwick County, Kansas being more particularly described as follows:

Beginning at the Southeast corner of said Northwest Quarter; thence along the South line of said Northwest Quarter on a Kansas Coordinate System 1983 South Zone bearing of S88°20'41"W, 790.99 feet; thence N01°48'17"W, 150.00 feet; thence parallel with said South line N88°20'41"E, 489.50 feet; thence S43°38'09"E, 47.08 feet; thence parallel with said South line N88°20'41"E, 271.02 feet to a point on the East line of said Northwest Quarter, thence along said East line S01°20'32"E, 115.00 feet to the Point of Beginning

A parcel of land lying in the Northwest Quarter of Section 29, Township 27 South, Range 1 West of the Sixth Principal Meridian, Sedgwick County, Kansas, being more particularly described as follows:

Commencing at the Northeast Corner of said Northwest Quarter; thence along the North line of said Quarter on a Kansas Coordinate System 1983 South Zone bearing of S88°06'39"W, 641.18 feet; thence S36°07'45"W, 63.47 feet to the Point of Beginning, said point lying 50.00 feet South of said North line; thence continuing S36°07'45"W, 507.78 feet; thence N04°23'45"W, 92.76 feet; thence N47°39'39"E, 146.15 feet; thence N27°51'39"E, 244.81 to a point lying 50.00 feet South of said North line; thence parallel with and 50.00 feet South of said North line N88°06'39"E, 84.11 feet to the Point of Beginning.

A parcel of land lying in the Northwest Quarter of Section 29, Township 27 South, Range 1 West of the Sixth Principal Meridian, Sedgwick County, Kansas, being more particularly described as follows:

All of a parcel of land described in Deed Book 1312, Page 424, EXCEPT: Commencing at the Northeast Corner of said Northwest Quarter; thence along the East line of said Quarter on a Kansas Coordinate System 1983 South Zone Bearing of S01°20'32"E, 50.00 feet to the Point of Beginning; thence along said East line S01°20'32"E, 2605.54 feet to the Southeast Corner of said Northwest Quarter; thence along the South line of said Quarter S88°20'41"W, 790.99 feet; thence

N01°48'17"W, 204.33 feet; thence N34°10'03"E, 204.39 feet; thence N28°04'30"E, 182.27 feet to a point on a non-tangent curve to the left; thence along said curve 432.21 feet, said curve having a central angle of 30°04'00", a radius of 823.64, and a long chord of 427.27, bearing N08°16'03"E; thence N07°57'09"W, 133.29 feet; thence N12°23'43"W, 127.98 feet to a point on a non-tangent curve to the left; thence along said curve 446.51 feet, said curve having a central angle of 32°19'05", a radius of 791.60 feet, and a long chord of 440.61 feet, bearing N29°37'34"W; thence N45°50'33"W, 227.22 feet to a point on a non-tangent curve to the right; thence along said curve 137.12 feet, said curve having a central angle of 37°47'23", a radius of 207.90 feet, and a long chord of 134.65 feet, bearing N23°30'10"W; thence N04°23'45"W, 410.05 feet to a point on the West line said parcel described in said Deed Book and said Page, said point also lying on the East line of a parcel of land described on Film 1212, Page 651; thence N47°39'39"E, 146.15 feet along the line common to said parcels of land; thence N27°51'39"E, 244.81 feet along said common line to a point lying 50.00 feet South of the North line of said Quarter; thence parallel with said North line N88°06'39"E, 763.90 feet to the Point of Beginning. AND EXCEPT all that portion of said parcel in Deed Book 1312, Page 424 platted as The Dell, Sedgwick County, Kansas.

SECTION 2. That if any part or portion of this ordinance shall be held or determined to be illegal, ultra vires or void the same shall not be held or construed to alter, change or annul any terms or provisions hereof which may be legal or lawful. And in the event this ordinance in its entirety shall be held to be ultra vires, illegal or void, then in such event the boundaries and limits of said City shall be held to be those heretofore established by law.

SECTION 3. That the City Attorney is hereby instructed at the proper time to draw a resolution redefining the boundaries and limits of the City of Wichita, Kansas, under and pursuant to K.S.A. 12-517, et seq.

SECTION 4. This ordinance shall become effective and be in force from and after its adoption and publication once in the official city paper.

ADOPTED at Wichita, Kansas, this 25<sup>TH</sup> day of October, 2016.

---

Jeff Longwell, Mayor

ATTEST:

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Karen Sublett, City Clerk

Approved as to form:

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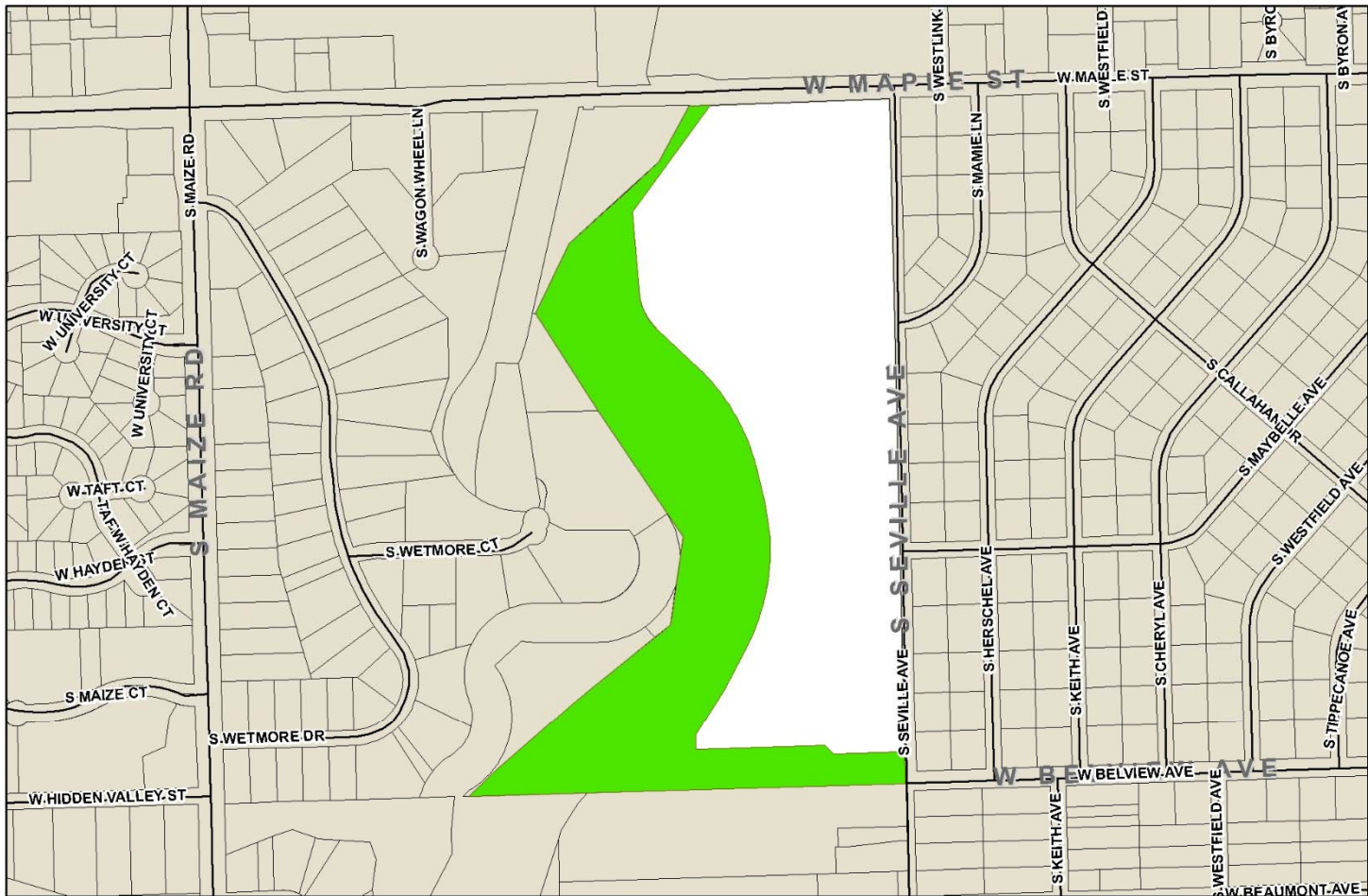
Jennifer Magana, City Attorney & Director of Law

An ordinance including and incorporating certain blocks, parcels, pieces, and tracts of land within the limits and boundaries of the City of Wichita, Kansas, and relating thereto.

**General Location:** Generally located south of Maple, approximately one-quarter mile east of Maize

Address:	n/a	Reason(s) for Annexation:
25.33	Area in Acres	X Request
0	Existing population (est.)	Unilateral
0	Existing dwelling units	Island
0	Existing industrial/commercial units	Other:

Existing zoning:	RR Rural Residential and SF-20 Single Family Residential
------------------	----------------------------------------------------------



ANNEXATION AREA

WICHITA

UNINCORPORATED SEDGWICK COUNTY



Software: ArcGIS  
Map Data Sources:  
City of Wichita  
Sedgwick County  
Prepared: 2/9/09  
It is understood that while the City of Wichita Data Center Geographical Information Systems Department have no indication and reason to believe that there are inaccuracies in information incorporated in the base map, the Data Center-GIS personnel make no warranty or representation, either expressed or implied, with respect to the information or data displayed.  
Note: Public property represented on this map is not intended to be inclusive.

City of Wichita  
City Council Meeting  
October 18, 2016

**TO:** Wichita Airport Authority

**SUBJECT:** Garver, LLC  
Use and Lease Agreement  
Wichita Dwight D. Eisenhower National Airport

**INITIATED BY:** Department of Airports

**AGENDA:** Wichita Airport Authority (Consent)

---

**Recommendation:** Approve the Agreement.

**Background:** Garver, LLC has been providing engineering services since 1919 for transportation, aviation, water, energy, industrial, federal, and other types of projects. Currently, the company has offices located in 18 states with the headquarters located in Little Rock, Arkansas.

**Analysis:** Garver is interested in expanding the company's operations in the Wichita area, with a primary focus on aviation. Therefore, Garver wishes to lease space at the office building located at 2120 Airport Road on the Wichita Dwight D. Eisenhower National Airport. The term of the agreement is for a six-month period, beginning on September 1, 2016, with three consecutive six-month option periods.

**Financial Considerations:** Based upon negotiations between Garver and airport staff, the annual facility rental rate will be \$9 per sq. ft for the use of 953 sq. ft. of office space. Garver will accept the responsibility to do janitorial cleaning and stocking the restrooms in the facility. The new annual revenue to the Wichita Airport Authority (WAA) for the leased area will be \$8,577.

**Legal Considerations:** The Agreement has been reviewed and approved as to form by the Law Department.

**Recommendations/Actions:** It is recommended that the Wichita Airport Authority approve the Agreement and authorize the necessary signatures.

**Attachment:** Agreement.



# **WICHITA AIRPORT AUTHORITY**

## **LEASE AGREEMENT**

By and Between

**WICHITA AIRPORT AUTHORITY**  
Wichita, Kansas

and

**GARVER, LLC**

Use and Lease Agreement  
2120 Airport Road  
Wichita Dwight D. Eisenhower National Airport  
Wichita, Kansas

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THIS LEASE AGREEMENT ("Agreement") is entered into this October 18, 2016, between The Wichita Airport Authority, Wichita, Kansas ("LESSOR") and Garver, LLC, ("LESSEE").

WHEREAS, LESSOR is a quasi-governmental entity authorized under the laws of the State of Kansas to own and operate one or more airports, with full, lawful power and authority to enter into binding legal instruments by and through its governing body; and

WHEREAS, LESSOR owns, operates, regulates, administers, and maintains the campus of Wichita Dwight D. Eisenhower National Airport ("Airport"); and

WHEREAS, LESSEE is an individual, or an entity authorized to operate in the state of Kansas that desires to lease a portion of the improvements on the real property commonly known as 2120 Airport Road, Wichita, Kansas defined below on the campus of the Airport from LESSOR under the terms and conditions set forth below in this Use and Lease Agreement (Agreement).

NOW, THEREFORE, in consideration of the mutual promises and agreements herein set forth, LESSOR and LESSEE do hereby covenant and agree as follows:

## **1. PREMISES**

LESSOR agrees to let to LESSEE, and LESSEE does hereby rent from LESSOR certain real property located at 2120 Airport Road, Suite A consisting of 953 sq. ft. of office space, all referred to herein as the Premises and shown on the attached Exhibit "A".

The taking of possession of the Premises by LESSEE shall in itself constitute acknowledgement that the Premises are in good and tenantable condition, and LESSEE agrees to accept Premises in its presently existing condition, "as is," "where is," and that LESSOR shall not be obligated to make any improvements or modifications to the Premises.

During the Term of this Agreement, LESSOR may re-measure various areas within and around the Premises, in an effort to more accurately reflect improvements, additions and modifications. In the event the square footage of the Premises identified herein differs from the Premises square footage determined by such re-measurement, the parties agree to enter into an amendment to this Agreement to modify the Premises description to reflect the actual square footage of the Premises subject to the provisions of this Agreement. If the actual square footage of the Premises is determined to differ from than the square footage of the defined Premises the current fees and charges shall be re-calculated. Thereafter, LESSEE's monthly fees and charges shall be based upon the re-measured square footage. The parties agree that any increase or decrease in the



monthly fees and charges payable resulting from re-measurement of the Premises shall not be applied retroactively. The Director may execute an amendment to this Agreement on behalf of LESSOR to reflect the adjusted monthly fees and charges.

## **2. INITIAL TERM**

The term of this Agreement shall commence on September 1, 2016, and shall continue for a period of six (6) months ("Initial Term"), with the Initial Term expiring on February 28, 2017, unless otherwise terminated under provisions agreed to herein.

## **3. OPTION TERMS**

This Agreement may be renewed at the LESSEE's option for three (3), consecutive six (6) month periods ("Option Term"), provided LESSEE is not in default hereunder beyond any applicable grace or cure periods in Rent or other payments to LESSOR at the time notice requesting exercising an Option Term is given.

If LESSEE wishes to exercise an Option Term, written notice shall be submitted to LESSOR no less than ninety (90) days prior to the expiration of the Initial Term (for 1st 6-month option), and ninety (90) days prior to the expiration of the second and third Option Terms. If LESSEE is in default of any obligation under this Agreement then any notice attempting to exercise the Option Term(s) shall be void.

**The first Option Term** shall commence on March 1, 2017 and expire on August 31, 2017.

**The second Option Term** shall commence on September 1, 2017 and expire on February 28, 2018.

**The third Option Term** shall commence on March 1, 2018 and expire on February 28, 2019.

The Initial Term and any Option Term are sometimes collectively referred to herein as the "Term."

#### **4. FACILITY RENT DURING INITIAL TERM AND OPTION TERMS**

During the Initial Term and Option Terms, facility rent shall be based upon the 953 sq. ft. of office space at the annual rate of nine dollars (\$9.00); therefore, LESSEE agrees to pay the annual facility rent of \$8,577.00, payable in monthly installments of \$714.75, due on the first day of each month.

#### **5. OTHER FEES AND CHARGES**

It is understood and agreed by LESSEE that LESSOR may assess fees and charges to LESSEE according to rates established by LESSOR's Schedule of Fees and Charges. Such Schedule shall be amended from time to time by action of the LESSOR.

#### **6. PAYMENT PROCEDURE**

LESSEE shall pay to LESSOR in advance on the first day of each month, without demand or invoicing, for facility rent for the Premises as set forth herein. LESSEE shall pay to LESSOR all other fees, i.e. utility, maintenance, reimbursements, or other special charges, within thirty (30) days of the date of invoices of all amounts due as set forth in this Agreement. In the event LESSEE fails to make payment within ten (10) days of the dates due as set forth in this Agreement, and after LESSOR has provided LESSEE with written notice and LESSEE does not make payment within seven (7) calendar days after the date said notice is received, then LESSOR, may charge LESSEE a monthly service charge of twelve percent (12%) on an annual basis for any such overdue amount, unless a lesser sum is set as the maximum allowable under state statutes on any such overdue amount, plus reasonable attorneys' and administrative fees incurred by LESSOR in attempting to obtain payment. If LESSOR does not receive payment within seven (7) days of the date of receipt of said written notice, then the monthly service charge shall retroactively commence on the date the payment was originally due.

LESSEE shall make all payments to the Wichita Airport Authority and in a form acceptable to LESSOR. ACH direct deposit is preferred. Bank account and routing information is available upon request. Payments made by check shall be delivered or mailed to:

Wichita Airport Authority  
2173 Air Cargo Road  
Wichita, Kansas 67209

or such other address as designated in writing.

Bills, notices and invoices may be delivered to the LESSEE by mail or personal delivery at:

Garver, LLC  
2120 Airport Road, Suite A  
Wichita, Kansas 67209

Or [AccountsPayable@GarverUSA.com](mailto:AccountsPayable@GarverUSA.com)

or such other address as designated in writing.

## **7. LESSEE'S IDENTITY**

LESSEE must be a natural person or an entity, firm, company, corporation, partnership, limited liability company, or a joint venture which has substance under State of Kansas Law and a specific legal identity and business purpose as registered with the Secretary of State in the LESSEE's state of business residence.

## **8. PERMITTED USE OF PREMISES**

LESSEE shall have the right of ingress and egress, in common with others for the benefit of its employees, invitees, contractors, agents and representatives, to be exercised in a reasonable manner. This right of ingress and egress is granted for activities incidental or related to LESSEE'S approved activities, and for no other purposes except as may be approved in writing by LESSOR. This right is subject to federal, state and local security and safety requirements and standards. As required by Kansas state statute, it is understood and agreed that the Premises shall be used and occupied for aviation purposes or purposes incidental or related thereto and the primary purpose shall be for the operation of engineering consulting services with emphasis on aviation related construction.

LESSEE recognizes that other tenants now and hereafter may occupy other portions of the Airport, and that such other tenants shall have the right in common with LESSEE to use public roadways, streets, ramps, taxiways, runways, access gates, lighting, beacons, navigational aids, or other conveniences for aeronautical operations, and these common facilities are not under an exclusive use lease; and LESSEE shall conduct its operations in such a manner as to not impede access by others to these common facilities, nor in any other way interfere with, nor disrupt the business of other tenants or the quiet enjoyment of their leasehold interests at the Airport.

LESSOR reserves the right to grant and/or permit other parties the right to use any portion of the Airport, except that described in Section 1, Premises, for any permitted purpose, and upon any fair and non-discriminatory terms established by the LESSOR.

LESSEE, its affiliated entities, subsidiaries, employees, agents, representatives, contractors, and subcontractors, will not transact or otherwise engage in any other activities, business, and/or services on or from the Premises, except as described in this Agreement, unless such is provided for by a separate written approval, or amendment to this Agreement, and subject to approval by LESSOR.

The parties acknowledge that this lease is for office space, and does not include airfield access.

## **9. PROHIBITED USE OF PREMISES**

The Premises shall not be used for any purpose not expressly authorized in Section 8, Permitted Use of Premises. The following operations, services and concessions shall be specifically prohibited on or from the Premises or any other location at the Airport:

- (a) Commercial catering, restaurant and/or lounge concessions.
- (b) Commercial (for hire) ground transportation;
- (c) Commercial "paid" parking;
- (d) Commercial hotel or lodging;
- (e) Commercial outdoor advertising;
- (f) Sale or lease of non-aviation products and services;
- (g) Sale of aviation fuels, or other fuel or lubricant products;
- (h) Any services associated with or resembling fixed-base operation services;
- (i) Revenue-producing communication systems or systems not directly applicable to LESSEE's operations on the Premises;
- (j) Automobile rental service;
- (k) Any activity considered by LESSOR to not be aviation purposes or purposes incidental or related thereto.

LESSEE, its affiliated entities, subsidiaries, employees, agents, representatives, contractors, and subcontractors, shall not transact or otherwise engage in any other activities, business, and/or services on or from the Premises, except as described in this Agreement, unless such is provided for by a separate written approval, or amendment to this Agreement, and subject to approval by LESSOR.

## **10. NON-EXCLUSIVE USE OF CERTAIN FACILITIES**

LESSOR grants the LESSEE, in common with other users, the non-exclusive use of the Airport and appurtenances, together with all facilities, improvements and services which are now, or may hereafter be provided at, or in connection with the Airport. This use is limited to the purposes for which such facilities were designed and constructed, and for no other purposes, and is available only from time to time and on a non-exclusive use basis, according to the discretionary operational decisions of LESSOR. These facilities include, but are not limited to roadways, streets, ramps, taxiways, runways, access gates, lighting, beacons, navigational aids, or other conveniences for aeronautical operations which are not exclusively leased areas of the LESSEE or of any other tenant on the Airport.

## **11. LESSEE'S RIGHTS AND PRIVILEGES**

LESSEE shall have the following rights and privileges on the Premises and on the Airport:

- (a) The rights to install, operate, repair, and store upon the Premises all personal property and fixtures necessary for the conduct of LESSEE's lawful business;
- (b) The right of ingress and egress to and from the Premises, which rights shall extend to LESSEE's invitees, contractors, subcontractors, agents, representatives and employees; subject, however, to all reasonable security regulations; and
- (c) The right in common with others authorized to do so, to use the common areas of the Airport, consisting of but not limited to roadways, sidewalks, and streets.

## **12. LESSOR'S RIGHTS AND PRIVILEGES**

LESSOR expressly reserves from the Premises:

- (a) Mineral Rights. All gas, oil and mineral rights in and under the soil.
- (b) Water Rights. All statutory, exempt, vested, and granted appropriation rights for the use of water, and all rights to request further appropriations for the Premises.
- (c) Airspace. A public right of flight through the airspace above the surface of the Premises. This public right of flight shall include the right to cause or allow in said airspace, any noise inherent in the operation of any aircraft used for navigation or flight through said airspace or landing at, taking off from, or operation on the Airport. No liability on the part of LESSOR or any tenant will result from the exercise of this right.

- (d) **Navigational Aids.** The right to install, maintain and modify and/or permit others to install, maintain and modify on the Premises visual and electronic navigational aids.
- (e) **Entry and Inspection of Premises.** The right of LESSOR, its authorized officers, employees, agents, contractors, subcontractors, authorized government agents, or other representatives to enter upon the Premises:
  - (1) To inspect at reasonable intervals during regular business hours (or any time in case of emergency or lawful investigation) to determine whether LESSEE has complied, and is complying with the terms and conditions of this Agreement;
  - (2) To inspect Premises, facilities, and equipment for compliance with laws, regulations and/or codes of the federal, state or local government, airport rules and regulations and airport standard operating procedures; and
  - (3) To construct or erect new facilities, or to perform maintenance, repair, or replacement relating to the Premises or any facility thereon, as may be required and necessary, but LESSOR shall not be obligated to exercise this option.
- (f) **Radio/Wireless Communication Systems.** The right to approve or withhold approval of any use of fixed RF Systems for the transmission of radio frequency signals in/on the Premises.
- (g) **General Provisions.** The right to exercise any and all rights set out in Section 44, GENERAL PROVISIONS.
- (h) **Signage.** The right to enter onto the premises for installation, and the right to install any signage on the Premises required by law, order, rule, regulation, Airport Security Program or federal directive.

Provided that exercise by LESSOR of any such reserved rights (a) through (h) shall be without expense to the LESSEE and shall not unreasonably or materially interfere with LESSEE's use of the Premises and shall not delay LESSEE in the exercise of its rights or the performance of its duties hereunder or increase the costs of such performance.

### **13. NON-INTERFERENCE WITH AIRPORT OPERATIONS**

LESSEE covenants and agrees that it shall not allow any condition on the Premises, nor permit the conduct of any activity on such Premises, which shall materially or adversely affect the development, improvement, operation, or maintenance of the Airport or its facilities, nor shall LESSEE use or permit the Premises to be used in any manner which might interfere with the constitute a hazard to the general public, or to LESSOR's tenants or the customers, agents, invitees, contractors, representatives and employees of those tenants.

LESSEE covenants and agrees that it shall not allow any condition on the Premises, nor permit the conduct of any activity on such Premises, which shall materially or adversely affect, infringe upon, block or interrupt the operations and business activity of other airport tenant leaseholds.

#### **14. COOPERATION WITH AIRPORT DEVELOPMENT**

LESSEE understands and agrees that LESSOR may pursue Airport development, improvements and maintenance activities from time-to-time that may affect the Premises and other areas of the Airport. LESSEE agrees to work cooperatively and in good faith with the LESSOR and other tenants and contractors in development, improvement and maintenance activities to minimize any disruptions. If requested by the LESSOR, LESSEE shall cooperate with and assist the LESSOR to the greatest extent possible in the development and implementation of any plans, designs, ingress/egress, or transition that may arise in connection with such Airport development, improvement, and maintenance activities. LESSOR may temporarily or permanently close, re-route, or consent to the closing or re-routing of any method of ingress or egress on the Airport, so long as the means of ingress and egress to the Airport are maintained. LESSOR may temporarily close the runway, taxiways, ramps or portions thereof for purposes of maintenance, replacement, re-construction or expansion. Exercise by LESSOR of any such Airport development, improvement, or maintenance shall be without expense to LESSEE, but LESSEE shall not be entitled to any compensation for loss of revenue, business interruption, relocation, temporary storage rental, additional increased fuel costs, cycles on engines or any other expense attributable to the development, improvement, or maintenance on the Airport.

#### **15. FUTURE ALTERATION AND IMPROVEMENT STANDARDS**

LESSEE may, with prior written approval of LESSOR, and by lease amendment, if appropriate, add to, improve, or alter the Premises subject to all conditions set forth herein. Any such addition or alteration must be designed and constructed in a manner that shall not weaken or impair the structural strength or reduce the value or functionality of the Premises or existing improvements thereon. The design shall meet the reasonable approval of the Director of Airports prior to construction beginning. It shall be the responsibility of LESSEE to file all necessary alteration and construction forms with any other approval required by the City of Wichita.

Before beginning construction, LESSEE shall, by agreement with its contractor or otherwise, provide performance, labor and material payment bonds and statutory bonds with respect to any improvement that exceeds five thousand dollars (\$5,000) in cost constructed on the Premises in the full amount for the project contract. The general contractor under any such contract shall be the principal and a surety company or companies qualified to do business in Kansas shall serve as surety. Such performance, labor and material payment bonds shall name the Wichita Airport Authority and the City of Wichita, Kansas as the obligees. The statute of limitations on all such bonds shall be for a minimum of two (2) years from project completion.

For improvement that exceeds five thousand dollars (\$5,000) constructed on the Premises, LESSEE shall purchase and maintain a builder's risk insurance policy, or require its prime contractor to carry such policies, in a sum equal to the full project replacement value as set forth in Section 24, Liability Insurance. Builder's Risk coverages shall be in effect from the date of the construction notice-to-proceed and continue in force until all financial interest ceases. LESSEE shall also purchase and maintain any other insurance policies described in Job Site Requirements document relating to construction of the Premises. All other coverages shall remain in force as described in the Job Site Requirement document. The Wichita Airport Authority and the City of Wichita shall be named as additional insured on such policies, and all policies shall be written by insurers subject to LESSOR's reasonable approval.

## **16. CONSTRUCTION INSPECTIONS**

LESSOR shall have the right at any reasonable time prior to the completion of the construction of any future alterations and improvements thereto, to enter upon the Premises for the purpose of inspecting the construction thereof, to determine whether or not the improvements are being constructed substantially in accordance with the plans and specifications. If at any time during the progress of such construction, it is determined that the improvements are not being constructed substantially in accordance with the plans and specifications, upon receipt of written notice from the LESSOR, the LESSEE shall make or cause to be made such reasonable alterations as may be required to cause the improvements to substantially conform to the plans and specifications. However, LESSOR has no duty to undertake such inspections, and LESSOR shall not be held to any duty of care regarding such inspections, if conducted.



## **17. REMOVAL AND DEMOLITION**

LESSEE shall not remove or demolish, in whole or in part, any improvements upon the Premises without the prior written consent of the LESSOR, which may, at its discretion, condition such consent upon the obligation of LESSEE replacing the same by a reasonable improvement specified in such consent. LESSEE shall obtain written consent before commencing demolition and restoration. Failure to obtain this consent shall entitle the LESSOR to such compensation as is necessary to restore the affected improvements.

## **18. TITLE TO FACILITIES, IMPROVEMENTS AND FIXTURES**

It is understood and agreed that title to the Premises and to all existing and future structures, facilities, improvements and fixtures shall be, and shall remain, exclusively with LESSOR, the Wichita Airport Authority.

LESSEE shall, without cost to LESSOR, furnish and install all non-attached furniture, movable partitions, decorations, accessories, equipment, and tools necessary to conduct its business, which shall retain status as personal property even though temporarily affixed to the Premises. Title/ownership to non-attached personal property shall remain with LESSEE.

The term "fixtures", whenever used in this Agreement, shall be construed to include all structures and fixed systems and equipment erected or installed upon the Premises, all fencing, grading and pavement, all underground wires, cables, pipes, conduits, tanks, drains and drainages; and all other property of every kind and nature which is permanently affixed to the Premises, except LESSEE's personal property.

All facilities, structures fixtures and improvements, and alterations and additions to the Premises, excluding personal property of LESSEE, placed at the expense of LESSEE, shall remain upon and be surrendered with the Premises as a part thereof, on any termination of this Agreement, for any cause, and shall remain the property of the LESSOR.

## 19. LIENS

LESSEE shall take or cause to be taken all steps that are required or permitted by law in order to avoid the imposition of any lien upon the Premises or any improvements thereon. Should actions of the LESSEE cause any lien be placed on the Premises or any improvements thereon, LESSEE shall cause such to be removed. This obligation includes, but is not limited to, tax liens and liens arising out of or because of any financing, construction or installation performed by or on behalf of LESSEE or any of its contractors or subcontractors upon LESSEE's Premises or arising out of or because of the performance of any work or labor to it or them at said Premises or the furnishing of any materials to it or them for use at said Premises. Should actions of the LESSEE cause any such lien be made or filed, LESSEE shall bond against or discharge the same within thirty (30) days after actual notice of the same from any source, whether from LESSOR or otherwise, and provide written proof of discharge or bonding to LESSOR within that time. LESSEE acknowledges that LESSEE acquires no equity interest in the Premises, notwithstanding its construction of improvements on the Premises. Although such improvements accrue to the LESSOR, improvements are for the enhancement of LESSEE's use of the Premises. LESSEE has no agency authority to act on behalf of LESSOR for any such construction. LESSEE may not mortgage or pledge as collateral its leasehold interest herein without the prior written consent of the LESSOR.

LESSOR may consent, upon LESSEE's written request, to an assignment of rents to a governmentally regulated and insured commercial lender as partial security for financing of LESSEE's activities on the Premises, which assignment is intended to be a present transfer to such lender of all of LESSEE's rights to collect and receive rents and charges from approved users, operators, sublessees and permittees. Lender(s) shall have no rights to assign this Agreement or sublease the Premises without the prior written consent of the LESSOR as required under Section 22, Assignment and Section 23, Subleasing, Permitting and Contracting. Upon LESSEE's written consent LESSOR agrees to give Lender(s) notice of any default or termination of the Agreement, and allow Lender(s) the same opportunity as the LESSEE under the Agreement to correct any condition or cure any default. Nothing in this Section is intended to relieve the LESSEE of its obligations under this Agreement.

## **20. TAXES, LICENSES AND PERMITS**

LESSEE agrees to pay all present and future taxes or, in lieu of taxes, special assessments now or hereafter levied or assessed (1) upon the Premises and facilities, (2) upon property owned or possessed by LESSEE and situated on the Premises, and (3) upon LESSEE's interest in or use of the Premises. LESSEE shall defend, indemnify and save LESSOR and the City of Wichita, Kansas harmless from any claims or liens in connection with such taxes, obligations in lieu of taxes or assessments.

LESSEE shall promptly pay all taxes, excises, license fees and permit fees of whatever nature applicable to its operation on the Premises. LESSEE may elect, however, at its own cost and expense, to contest any such tax, excise, levy, or assessment. LESSEE shall keep current all Federal, State or local licenses, operating certificates or permits required for the conduct of its operations. LESSEE represents and warrants to LESSOR that it has obtained all license, franchise, operating certificates or other agreements or permits necessary to operate LESSEE's operation in accordance with the terms of this Agreement, and LESSEE covenants to keep all such licenses, franchises, permits, operating certificates and other agreements in full force and effect during the Term of this Agreement.

LESSEE shall pay all lawful taxes and assessments which, during the Term hereof, may become a lien upon or which may be levied by the State, County, City or any other tax levying body, upon the leased Premises or upon any taxable interest of LESSEE acquired in this lease agreement, or any taxable possessory right which LESSEE may have in or to the leased Premises, including any improvements or facilities located on the Premises. LESSEE shall also pay all lawful taxes and assessments on taxable property, real or personal, owned by LESSEE in and about said Premises. Nothing in this Section shall prevent LESSEE from contesting the legality, validity or application of any such tax or assessment to the full extent LESSEE may be lawfully entitled so to do.

## **21. UTILITIES**

The cost of electricity, gas, and water shall be included as a part of the lease rental rate. Any other costs, such as telephone and cable, but not limited to these, shall be at LESSEE's initiation and expense. LESSOR shall not be liable to LESSEE for damages arising out of any cessation or interruption of gas, water, electricity, telephone, or other utility service during the lease term or any extension thereon. LESSOR shall take reasonable steps to promptly restore such services.

LESSOR is the only entity allowed to install or remove any cabling. Cabling includes, but is not limited to, any type of telecommunications or network cable such as CAT3, CAT5, CAT6; fiberoptics cable; and/or coaxial cable. Cabling for basic phone service shall be provided as part of the rental rate. However, should additional network cable, coaxial for security or fiber optic cable, be required for LESSEE's operation, LESSEE shall be required to make arrangements with LESSOR, and such installation shall be at LESSEE's expense. It shall be LESSEE's responsibility to contract for services using such cables from LESSEE's preferred service provider.

Unless otherwise agreed upon in writing, if LESSEE requires utilities beyond that currently provided or that are available to be extended to the Premises boundary, LESSEE agrees to pay the full cost and expense associated with the upgrade/extension/installation of all such utilities related to its use of the Premises, and to comply with all provisions for maintaining such utilities.

The LESSOR reserves for itself the right to upgrade, extend, install, maintain and repair all utilities and services on or across the Premises, whether or not such services or utilities are for the benefit of LESSEE. The LESSOR shall take all reasonable care and diligence to protect existing improvements and utilities, and shall avoid to the greatest extent possible any unreasonable interference or interruption to LESSEE's operations.

All electrical, data and communications utilities installed or caused to be installed shall be underground, and no utility services or other cables or wires shall be installed on poles or otherwise above ground. Unless otherwise provided in this Agreement, all utilities and conduits or ducts installed by anyone on the Premises shall be considered fixtures as defined under Section 18, Title to Facilities, Improvements and Fixtures, and shall become the owned property of LESSOR.

Wastes not legally permitted and authorized for disposal into the storm and/or sanitary drainage system shall not be discharged, connected or introduced into storm and/or sanitary drains and the storm and/or sanitary drainage system. LESSEE shall take all reasonable precautions to prevent the discharge of material into any drainage system that would create interference with the flow therein, or that would cause a hazard or unlawful contamination thereto.

## **22. ASSIGNMENT**

With the exception of assignment to a parent or "holding" company or subsidiary, LESSEE shall have no right to assign or delegate any of its rights or duties pursuant to this Agreement without the prior written consent of LESSOR. Any assignment or delegation so made and so permitted shall be subject to all terms, conditions and other provisions of this Agreement. Any attempted assignment or delegation in violation of this provision shall be void and have no force or effect whatsoever.

## **23. SUBLEASING, PERMITTING AND CONTRACTING**

LESSEE shall not sublease, rent or permit any persons, firms or corporations to occupy any part of the Premises, or to provide any type of commercial or non-commercial operation, aviation or otherwise, on the Premises without having first received the prior written consent of LESSOR, granted only under the following conditions:

(a) Any arrangements must be in the form of a written instrument and must be for purposes and uses of the Premises as authorized under this Agreement, and shall be subject to the provisions of this Agreement. LESSEE shall submit a copy of such proposed instrument at the time of requesting consent of LESSOR.

(b) All sublease(s) must comply with Sections 8 and 9 of this Agreement, and shall be reviewed for compliance by LESSOR to that end. Any arrangement for the subleasing of space must be in conformance with the use of the Premises outlined in this Agreement, unless expressly approved otherwise in writing by LESSOR.

(c) LESSEE must keep current records on file and available for LESSOR's inspection, that describes the nature and document the legitimacy of the sublessee's business, including all current municipal, state, or local licenses or permits required for the conduct of sublessee's business.

(d) LESSEE hereby agrees that it shall incorporate language acceptable to LESSOR into all of its sublease agreements, placing on any sublessee and that sublessee's affiliated entities, customers, employees, invitees, contractors, and subcontractors similar restrictions, as may be appropriate to its approved uses as those which bind LESSEE and its use of the facility through this Agreement. LESSEE shall also incorporate and make reference to this Agreement, as may be amended from time to time, to ensure sublessee's operations and conduct are subject to and are in compliance with the terms and conditions of this Agreement, as may be amended from time to time. Any sublease agreement shall explicitly state that it is subordinate to this Agreement, and that the sublessee shall never obtain rights in the Premises greater than those held by LESSEE under this Agreement, as amended. Any sublessee shall be specifically subject

to eviction from the Premises as a result of termination, cancellation, or expiration of this Agreement, irrespective of sublessee's state of compliance with the terms of its sublease.

(e) LESSEE shall at all times during the term(s) of approved sublease(s), remain responsible to LESSOR for the compliance of its sublessees with the terms and conditions of any approved sublease and with this Agreement. LESSOR may look to LESSEE directly to satisfy any failure of sublessee to comply with these documents.

(f) Consent to one sublease permit or subcontract shall not be deemed consent to any subsequent sublease permit or subcontract. Prior written consent of the LESSOR shall be required for each sublease permit or subcontract executed by the LESSEE.

It is understood and agreed that this Section does not apply to third party hangar space lease/rental arrangements for non-commercial private use of aircraft storage, and office space related and incidental to the operation and administration thereof, as may be customary in the normal course of business as a commercial hangar operator.

## **24. LIABILITY INSURANCE**

LESSEE shall procure, maintain and carry, at its sole cost, in accordance with and/or until completion of this Agreement all insurance, as required per the amounts as set forth below. Insurance shall be furnished by a company licensed to do business in Kansas.

Insurance certificates shall be issued on a standard ACORD form and include the NAIC number of the insuring company. Each insurance company's rating, as shown in the latest Best's Key Rating Guide, shall be no less than A-VII, unless otherwise approved by the LESSOR, or from a Workers' Compensation pool approved by the State of Kansas. Insurance certificates must be received and approved by the LESSOR prior to occupancy.

Should any of the described policies in this Agreement be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions. The LESSOR reserves the right to request and receive for review certified copies of any and all insurance policies to which this Agreement is applicable prior to commencement of work. The failure of LESSOR to reject the LESSEE'S certificate of insurance shall not be deemed to constitute an acceptance by the LESSOR of a deficient certificate of insurance. If the LESSEE fails to procure or maintain any of the specified coverages the LESSOR has the right, but not the obligation, to secure the coverage and charge the cost to the LESSEE along with a 20% administrative fee.

The LESSEE shall be responsible for determining the types and limits of insurance coverage required by any approved sublessee. At a minimum, such sublessee shall carry Workers' Compensation, commercial general liability (minimum of \$1,000,000 per occurrence) and commercial automobile liability (minimum of \$1,000,000 combined single limit). LESSEE shall require in any approved sublease that the Wichita Airport Authority and the City of Wichita shall be added as primary and non-contributory additional insureds on the sublessee's commercial general liability policy.

The requirements, procurement and carrying of the required insurance shall not limit any of the LESSEE's obligations or liability under this Agreement or as a matter of law.

Where "minimum limits" of insurance are specified in this Section, such minimum insurance limits are required and considered by LESSOR to be the lowest insured amounts acceptable under this Agreement. The LESSEE is not limited or restricted whatsoever in securing additional insurance coverage and higher insured limits than those specified herein if, at the LESSEES determination and discretion and commensurate with the type of activity and associated business and operational risk, additional coverage and higher limits are necessary and appropriate.

Insurance shall include the following terms, conditions and minimum limits:

a) WORKERS' COMPENSATION

LESSEE shall maintain Workers' Compensation insurance to cover the statutory requirements of the Workers' Compensation laws of the State of Kansas for its operations on the Premises, and when applicable, to Federal Laws and Voluntary Compensation and Employer's Liability (including occupational disease) coverage. In the alternate, LESSEE may provide an appropriate statutory waiver.

b) COMMERCIAL GENERAL LIABILITY

LESSEE shall maintain Commercial General Liability Insurance on an occurrence form. Coverage shall include on-going operations, product/completed operations (minimum of two years following the project completion) and Personal and Advertising Injury. Minimum limits, as outlined herein, shall be:

General Aggregate (per project)	\$1,000,000
Products/Completed Operations	\$1,000,000
Personal and Advertising Injury	\$1,000,000
Each Occurrence	\$1,000,000

The Wichita Airport Authority and the City of Wichita shall be added as primary and non-contributory additional insureds with respect to LESSEE's operations.

## **25. ALL RISK PROPERTY INSURANCE**

LESSOR, at its expense, throughout the term of this Agreement, shall cause the structures, facilities, improvements and fixtures on the Premises to be insured against loss or damage by fire or other casualty equal to the full replacement value thereof and by an all risk coverage policy furnished by a company licensed to do business in Kansas. Such policy shall not exclude, or in the alternative, shall carry full coverage endorsements for damage from tornado, hail, flood, and sewer backup. The proceeds of any payments made under such insurance policy or policies shall be used to rehabilitate or reconstruct the insured facilities, subject to the provisions governing damage or destruction found at Section 40, Damage or Destruction.

## **26. SUBROGATION OF INSURANCE**

LESSOR hereby waives any and all rights of recovery against LESSEE for or arising out of damage or destruction of the building, or the demised Premises, or any other property of LESSOR, from causes then included under any of LESSOR's property insurance policies, to the extent such damage or destruction is covered by the proceeds of such policies, whether or not such damage or destruction shall have been caused by the negligence of LESSEE, its agents, servants or employees or otherwise, but only to the extent that its insurance policies then in force permit such waiver without diminution of LESSOR coverage.

LESSEE hereby waives any and all rights of recovery against LESSOR for or arising out of damage to or destruction of any property of LESSEE from causes then included under any of LESSEE's property insurance policies, to the extent such damage or destruction is covered by the proceeds of said policies, whether or not such damage or destruction shall have been caused by the negligence of LESSOR, its agents, servants or employees or otherwise, but only to the extent that its insurance policies then in force permit such waiver.



## **27. LOSS OF PERSONAL PROPERTY**

Any personal property of LESSEE or others placed in or upon the Premises shall be at the sole risk of the LESSEE, and LESSOR shall not be responsible or liable for any loss, damage and replacement thereto, regardless of the cause of such loss or damage, and the LESSEE waives all rights of subrogation against recovery from the LESSOR for such loss or damage unless such loss or damage is the result of the LESSOR's negligence.

## **28. TERMINATION BY LESSOR**

The LESSOR, in addition to any other rights to which it may be entitled by law or otherwise, may terminate this Agreement by giving LESSEE written notice in the event of default by LESSEE under this Agreement failing to be resolved in less than sixty (60) days after the LESSEE's receipt of written notice of such event of default and opportunity to cure from the LESSOR, upon or after the happening of any one of the following events:

- (a) LESSEE shall file a voluntary petition in bankruptcy or that proceedings in bankruptcy shall be instituted against it and LESSEE is thereafter adjudicated bankrupt pursuant to such proceedings;
- (b) A court shall take jurisdiction of LESSEE and its assets pursuant to proceedings brought under the provisions of any Federal reorganization act;
- (c) Receiver of LESSEE's assets shall be appointed;
- (d) LESSEE shall be divested of its estate herein by other operation of law;
- (e) LESSEE shall fail to perform, keep and observe any of the obligations, terms, warranties or conditions contained in this Agreement that on the part of LESSEE are to be performed, kept or observed.

If any such condition or default cannot reasonably be corrected within the sixty (60) day period and LESSEE has demonstrated due diligence with respect to curing said default, then, at the LESSOR's sole discretion, such cure period may be extended for consecutive periods of thirty (30) days, as long as diligent progress is made toward cure, with a reasonably foreseeable resolution date. Under such circumstances, default may be treated as cured until cured. Should diligent progress cease, or the reason for default become apparent as insoluble, then the Term shall cease and expire at the end of the thirty (30) day extension then in effect.

Acceptance of rental by LESSOR for any period or periods after a notice of default is issued by LESSOR of any of the obligations, terms, warranties and conditions herein contained to be performed, kept and observed by LESSEE shall not be deemed a waiver of any other right on the

part of LESSOR to terminate this Agreement for failure by LESSEE so to perform, keep and observe any of the obligations, terms, warranties, or conditions hereof to be performed, kept and observed. No waiver of default by LESSOR of any of the obligations, terms, warranties or conditions hereof to be performed, kept and observed by LESSEE, shall be construed to be or act as a waiver of any subsequent default of any of the obligations, terms, warranties or conditions herein contained to be performed, kept and observed by LESSEE.

## **29. TERMINATION BY LESSEE**

The LESSEE, in addition to any other rights to which it may be entitled by law or otherwise, may terminate this Agreement by giving LESSOR written notice in the event of default by LESSOR under this Agreement continuing for more than sixty (60) days after the LESSOR's receipt of written notice of such event of default and opportunity to cure from the LESSEE, upon or after the happening of any one of the following events:

(a) Issuance by any court of competent jurisdiction of a permanent injunction in any way preventing or restraining the use of the Airport or any major part thereof for Airport purposes and the remaining in full force of such permanent injunction for a period of at least one hundred and eighty (180) days.

(b) Inability of the LESSEE to use, for a period in excess of one hundred and eighty (180) days, the Airport or any part of the facility because of any law, order, rule, regulation or other action or non-action of the Federal Aviation Administration or any other governmental authority, or because of fire, earthquake, other casualties or acts of God or the public enemy.

(c) LESSOR shall fail to perform, keep and observe any of the obligations, terms, warranties or conditions contained in this Agreement that on the part of LESSOR are to be performed, kept or observed:

- i. LESSEE may give LESSOR written notice to correct such condition or cure such default, and if any such condition or default shall continue for sixty (60) days after receipt of such notice by LESSOR, LESSEE may terminate this Agreement and the Term hereof shall cease and expire at the end of such sixty (60) days in the same manner and to the same effect as if it were the expiration of the Term, unless such condition or default cannot reasonably be corrected within the sixty (60) day period and LESSOR has demonstrated due diligence with respect to curing said default, then such cure period may be extended for consecutive periods of 30 days, as long as diligent progress is made toward cure, with a reasonably foreseeable resolution date. Under such circumstances, default may be treated as cured until cured. Should diligent progress cease, or the reason for default

become apparent as insoluble, then the Term shall cease and expire at the end of the thirty (30) day extension then in effect;

(d) Assumption by the United States Government or any other authorized agency thereof of the operation, control or use of the Airport and the facility herein described, or of any substantial part or parts thereof in such a manner as to substantially restrict the LESSEE for a period of one hundred and eighty (180) days from operating on and within the facility.

(e) In the event of destruction of the facilities, improvements, or the demised Premises as more fully described in Section 40, Damage or Destruction.

### **30. MAINTENANCE AND REPAIR**

LESSEE, at its sole expense, shall at all times keep and maintain said Premises in a clean and sightly condition, free of trash, debris and obstructions.

LESSEE shall maintain and keep in repair at its own expense the interior of said Premises, keeping the same in proper condition, including:

- Painting interior walls, as needed,
- light bulb replacement,
- vacuuming and periodic carpet cleaning,
- cleaning of restrooms and breakroom,
- supplying and stocking paper supplies for restrooms and breakroom,
- recycling paper products and removal of trash,
- and any other minor repairs required to keep the Premises in proper condition.

LESSOR, its agents or employees, shall have the right to enter upon said Premises at any and all reasonable times to inspect the condition of the same. Should LESSEE, refuse or neglect to maintain its Premises as herein provided, LESSOR shall have the right to perform such maintenance on behalf of and for the LESSEE after thirty days written notice to LESSEE. Any costs for such maintenance shall be paid for by LESSEE, not later than thirty (30) days following demand by LESSOR for such payment at LESSOR's costs, plus twelve percent (12%) as administrative reimbursement to LESSOR.

Notwithstanding any other provisions in this Lease, LESSOR hereby represents and warrants that all electrical, plumbing, heating and air conditioning and mechanical systems located at the Premises are in good working condition upon commencement of this Lease. LESSOR shall keep same in good working condition.

LESSOR shall be responsible for structural repairs to the building (including walls and foundation), ballast replacement and for damages to property or equipment covered by insurance.

LESSOR shall provide and maintain landscaping and window washing during the Term of this Agreement.

LESSOR shall be responsible for maintenance, repair and replacement of common use paved surfaces, airfield edge lighting system, and storm drainage systems on the Airport not within or upon the Premises. LESSOR shall be responsible for maintenance, repair and replacement of the primary electrical system on the Airport and within or upon the Premises.

Should LESSEE not meet the established maintenance and repair obligations for all improvements, LESSOR may, but is not required to, accomplish the needed repairs by Airport staff or a contract with a third party, with such repairs being made at LESSEE's expense. A twelve percent (12%) administrative fee shall be charged on any task that is performed by the LESSOR or its agent on behalf of LESSEE upon thirty (30) days prior written notice of its intent to do so. The fee shall be applied to the total cost incurred by the LESSOR in performing the task. The fee represents the LESSOR's cost to manage the task including procurement services, approval processes, management staff time, supervision and overhead. In case of emergency action taken in order to protect against personal injury or property damage but not limited to, for which no notice is necessary, LESSOR shall charge the same cost to the expense of LESSEE and a twenty percent (20%) administrative fee.

### **31. SNOW AND ICE REMOVAL**

LESSEE shall be responsible for all snow and ice removal on the Premises. At no time shall LESSEE engage in snow and ice removal beyond the Premises without the prior approval of the LESSOR.

Snow piles, windrows or other accumulations of snow shall not:

- (a) Be closer than twenty five feet from any security fence;
- (b) Block any access gates or controls;
- (c) Block or impede any taxiway or taxi lane;
- (d) Impose an obstruction within the object free area of any taxiway or taxi lane;
- (e) Infringe upon, block or interrupt the business of other airport tenant leaseholds.

Snow piles and accumulations requiring removal may be stored on pre-approved/arranged paved or non-paved areas.

The use of snow and ice removal contractors may be authorized subject to prior written approval by LESSOR, and subject to acceptable completion of contractor employee training, and other reasonable safety requirements and standards that LESSOR may impose, including but not limited to compliance with Airport Rules and Regulations, and Standard Operating Procedures. All such snow and ice removal contractors shall maintain a general liability insurance policy of not less than \$500,000 limit, naming LESSEE, LESSOR and the City of Wichita as additional insureds.

LESSOR shall be responsible for snow and ice removal on paved surfaces of the Airport not within the Premises.

### **32. EXTERIOR SIGNS AND ADVERTISING**

LESSEE agrees that no signs or advertising material shall be erected on the Premises or on any improvement or facility on the Premises unless the design and layout of such signs and advertising material, together with the materials and method of construction of such signs and advertising material, shall have been approved in advance in writing by LESSOR, which approval shall not be unreasonably withheld or unduly delayed.

LESSEE shall not erect, install, operate, nor cause or permit to be erected, installed, or operated upon any non-leased Premises of the Airport property, any signs, banners, or other similar devices for its own business, or the business of others. This provision shall not have the effect of limiting or restricting LESSEE's right to enter into an agreement with LESSOR'S authorized and permitted marketing, advertising or signage agency for the display of informational, marketing or advertising media at approved designated locations on Airport property.

LESSEE shall have not right to erect or install, or cause or consent to be erected or installed any commercial outdoor advertising by an outdoor commercial advertising agency.

### **33. PORTABLE STORAGE CONTAINERS/STRUCTURES**

Unless specifically approved in writing, and under conditions specified by LESSOR, LESSEE shall not place or allow to be placed upon Premises, any type of portable storage container, trailer, unit, box, or barrel which is used to store merchandise and/or equipment and supplies outside of an enclosed permanent building or structure. Unless specifically approved, and under conditions specified by LESSOR, LESSEE shall not place or allow to be placed upon Premises, any type of portable or temporary structure, trailer, mobile home, modular structure or device.

LESSOR will not unreasonably withhold approval of such container(s) and structure(s) if such is of a temporary nature for the purpose of supporting construction, alteration or improvement activity, or other approved project.

### **34. GRANTING OF EASEMENTS**

LESSEE shall not (i) grant easements, licenses and other rights or privileges in the nature of easements with respect to the land, or (ii) release existing easements, licenses, right-of-ways and other rights or privileges, and LESSEE agrees, to the extent that it may legally do so, that it will execute and deliver any instrument necessary or appropriate to confirm and grant or release any such easement, license, right-of-way or other right or privilege or any such agreement or other arrangement, upon receipt by LESSEE of (a) a copy of the instrument of grant or release or of the agreement or other arrangement, and (b) a written application signed by the LESSOR requesting execution and delivery of such instrument, provided that, such grant or release is not detrimental to the proper conduct of the business of LESSEE, and such grant or release will not impair the effective use or interfere with the efficient and economical operation of the facilities. LESSEE shall not request any payment or other consideration for such execution, the same being amply supported by the promises exchanged in this Agreement. Any payments or other consideration received by LESSOR for any such grant or with respect to or under any such agreement or other arrangement shall be and remain the property of LESSOR. The obligations of this Section shall survive termination of this Agreement.

### **35. RULES AND REGULATIONS**

LESSEE, its agents and employees, shall be subject to any and all applicable rules, regulations, Airport Standard Operating Procedures, orders and restrictions which are now in force or which may hereafter be adopted by the Wichita Airport Authority or the City of Wichita, Kansas, in respect to the operation of the Airport; and shall also be subject to any and all applicable laws, statutes, rules, regulations or orders of any governmental authority, federal or state, lawfully exercising authority over the Wichita Dwight D. Eisenhower National Airport or LESSEE's operations conducted hereunder.

LESSOR shall not be liable to LESSEE for any diminution or deprivation of its rights hereunder on account of the exercise of any such authority as in this Section provided, nor shall LESSEE be entitled to terminate this Agreement nor be entitled to seek any damages from LESSOR by reason thereof unless exercise of such authority shall so interfere with LESSEE's exercise of the rights hereunder as to constitute a termination of this Agreement by operation of law in accordance with the laws of the State of Kansas, or as set out in Section 29, Termination By LESSEE.

### **36. MINIMUM STANDARDS FOR AERONAUTICAL ACTIVITIES**

LESSOR may, with due notice, from time-to-time, adopt and enforce reasonable Minimum Standards for Aeronautical Activities on the Airport, and amendments thereto, and the LESSEE agrees to observe and comply with the same. However, any minimum standards which may be developed and promulgated in the future and during the Term of this Agreement shall not have the effect of imposing upon LESSEE the requirements of additional facilities, services or standards beyond that set forth in this Agreement.

### **37. ENCROACHERS, TRESSPASSERS AND OTHER THIRD PARTY HAZARDS**

LESSEE shall lawfully remove, or cause to be removed by LESSOR or other official law enforcement agency, all encroachers, trespassers and other third parties violating laws of the federal, state or local government, or who are not on the Premises for legitimate purposes.

### **38. FIRE EQUIPMENT AND SYSTEMS**

LESSEE shall furnish and maintain on the Premises sufficient smoke detectors and portable fire extinguishing equipment and sufficient fire suppression as may be required by city code and insurance underwriters.

### **39. INDEMNITY**

To the extent allowed by law, LESSEE, shall protect, defend and hold LESSOR and the City of Wichita and its officers, elected officials, agents and employees completely harmless from and against any and all liabilities, losses, suits, claims, judgments, fines or demands arising by reason of injury or death of any person or damage to any property, including all reasonable costs for investigation and defense thereof (including but not limited to attorney fees, court cost and expert fees), or other liability of any nature whatsoever arising out of or incident to this Agreement and/or the use or occupancy of the Premises or the acts or omissions of LESSEE's officers, agents, employees, contractors, subcontractors, licensees or invitees, regardless of where the injury, death or damage may occur, except to the extent such injury, death or damage is caused by the negligence of LESSOR. The LESSOR shall give to LESSEE reasonable notice of any such claims or actions.

To the extent allowed by law, LESSOR shall protect, defend and hold LESSEE, its officers, members, managers, agents and employees completely harmless from and against all liabilities, losses, suits, claims, judgments, fines or demands arising by reason of injury to or death of any person or damage to any property, including all reasonable costs for investigation and defense thereof (including but not limited to attorney fees, court costs and expert fees), or other liability of any nature whatsoever arising out of or incident to this agreement and/or the use or occupancy of the Premises or the acts of omissions of LESSOR's officers, agents, employees, contractors, subcontractors, licensees or invitees, regardless of where the injury, death or damage may occur, except to the extent such injury, death or damage is caused by the negligence of LESSEE. The LESSEE shall give LESSOR reasonable notice of any such claims or actions.

Should LESSEE, its employees, subcontractors, suppliers, agents, customers, and/or representatives cause any violations of federal, state or local law, regulation or ordinance, and should LESSOR be cited for a fine or penalty for such violation, LESSEE agrees to reimburse LESSOR for any monetary fine or penalty which may be imposed on LESSOR. However, nothing herein shall prevent the LESSEE from contesting the legality, validity or application of such fine or penalty to the full extent LESSEE may be lawfully entitled, nor require LESSOR to pursue such a contest on LESSEE's behalf.



The provisions of this Section shall survive the expiration or termination of this Agreement to the extent that they relate to liabilities, losses, suits, claims, judgments, fines or demands arising from or incident to events occurring during LESSEE'S occupancy of the Premises. The LESSEE shall use counsel reasonably acceptable to LESSOR in carrying out its obligations in this Section.

#### **40. DAMAGE OR DESTRUCTION**

In the event that facilities or improvements on the Premises are damaged or destroyed in whole or in part by fire, lightning or any other peril or other casualty during the Term of this Agreement, this Agreement shall remain in full force and effect and LESSEE shall proceed with due diligence to repair, restore, rebuild or replace said damaged or destroyed property or parts thereof to as good a condition as all affected properties were in immediately prior to such damage or destruction, subject to such alterations as LESSEE may elect to make and are permitted in this Agreement. All proceeds from the insurance policies related to such damage or destruction shall be first applied to cover the cost of such repairs or restoration. In alternative, and in LESSOR's discretion to allow and LESSEE's election to exercise, LESSEE may be released from this Agreement upon payment of all demolition and removal costs for damaged or destroyed improvements and payment therefor at the fair market value.

#### **41. CONDEMNATION**

If, during the Term, title to, or the temporary use of, all or any part of the Premises shall be condemned by any authority exercising the power of eminent domain, LESSEE shall, within fifteen (15) days after the date of entry of a final order in any eminent domain proceedings granting condemnation, notify LESSOR in writing as to the nature and extent of such condemnation and whether it is practicable for LESSEE to acquire or construct substitute improvements, or whether LESSEE shall elect to terminate this lease.

If LESSEE shall determine that such substitution is practicable and desirable and LESSOR shall agree thereto, LESSEE shall forthwith proceed with and complete with reasonable dispatch the acquisition or construction of such substitute improvements. In such case, any net proceeds received from any award or awards with respect to the Premises or any part thereof made in such condemnation or eminent domain proceeds shall be used and applied for the purpose of paying the cost of such substitution. Any proceeds not required for such costs shall be distributed to the parties in pro-rata distributions as their interests may appear based upon Agreement Term remaining and the fair market value of each party's interest at the time the proceeds are received.

If LESSEE shall determine that it is not practicable and desirable to acquire or construct substitute improvements, any net proceeds shall be distributed to the parties in pro-rata distributions as their interests may appear based upon the Agreement Term remaining, and the fair market value of each party's interest at the time the proceeds are received.

LESSOR shall cooperate fully with LESSEE in the handling and conduct of any prospective or pending condemnation proceedings with respect to the Premises or any part thereof. In no event shall LESSEE or LESSOR voluntarily settle or consent to the settlement of any prospective or pending condemnation proceedings with respect to the Premises without the mutual agreement and written consent of the other party to this Agreement.

#### **42. MODIFICATIONS FOR GRANTING FAA FUNDS**

In the event that the LESSOR determines the Federal Aviation Administration requirements call for modifications or changes to this Agreement as a condition precedent to granting of funds for the improvement of the Airport, these modifications or changes shall supersede this Agreement and LESSEE agrees to consent to such amendments, modifications, revisions, supplements or deletions of any of the terms, conditions or requirements of this Agreement as may be reasonably required by the LESSOR to fully comply with federal grant assurances and directives and to obtain Federal Aviation Administration grants-in-aid, provided that no such changes shall materially alter the rights or obligations of LESSEE hereunder.

#### **43. NONDISCRIMINATION**

The LESSEE agrees that it shall not discriminate or permit discrimination against any person on the basis of race, color, sex, religion, disability, age (except where age is a bona fide occupational qualification), national origin or ancestry in its operations or services, and its use or occupancy of property under this Agreement. The LESSEE agrees to comply with all applicable provisions of federal and state laws, regulations, or executive orders prohibiting discriminatory conduct.

#### 44. GENERAL PROVISIONS

**Maintenance, Repair, Direction and Control.** LESSOR reserves the right, but is not obligated to exercise the right, to maintain and keep in repair the landing area of the Airport and all publicly owned facilities of the Airport, together with the right to direct and control all activities of LESSEE in this regard. These areas shall include, but are not limited to, those areas which are necessary to serve the aeronautical users of the Airport, except that LESSOR shall not be obligated to maintain and keep in repair such areas of the Airport as may be leased to or under the control of Airport tenants, whether such area serves aeronautical users or otherwise.

**Brokerage Fees.** The Authority will not permit brokerage fees representing the LESSEE for any Airport property or facilities. All brokerage fees shall be the responsibility of the LESSEE.

**Operation of Airport by the United States of America.** This Agreement and all the provisions hereof shall be subject to whatever right the United States of America now has or in the future may have or acquire, affecting the control, operation, regulation and taking over of said Airport or the exclusive or nonexclusive use of the Airport by the United States during the time of war or national emergency.

**14 CFR Part 77 of Federal Aviation Regulations.** LESSEE agrees to comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations in the event future construction of a building, structure, or attachment thereto is planned for the Premises, or in the event of any planned modification or alteration of any present or future building or structure situated on the Premises. LESSEE by accepting this Agreement expressly agrees for itself, its successors and assigns, that it shall not erect nor permit the erection of any structure or object, nor permit the growth of any tree on the Premises which shall exceed such maximum height as may be stipulated by LESSOR. It is understood and agreed that applicable laws, codes, regulations or agreements concerning height restrictions shall govern the maximum height to be stipulated by LESSOR. In the event the aforesaid covenants are breached, LESSOR reserves the right to enter upon the Premises and to remove the offending structure or object, and cut down the offending tree, all of which shall be at the expense of LESSEE and without liability to LESSOR.

**Airspace.** There is hereby reserved to LESSOR, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the Premises. This public right of flight shall include the right to cause or allow in said airspace, any noise inherent in the operation of any aircraft used for navigation or flight through the said airspace or landing at, taking off from or operation on the Airport. No liability on the part of LESSOR shall result from the exercise of this right.

**Easement for Flight.** LESSEE releases LESSOR from any present or future liability whatsoever and covenants not to sue LESSOR for damages or any other relief based directly or indirectly upon noise, light, vibrations, smoke, fumes, odors, air currents, electronic or other emissions occurring as a result of aviation or airport related operations at or otherwise associated with the Airport. This release and covenant includes but is not limited to claims for damages for physical or emotional injuries, discomfort, inconvenience, property damage, death, interference with use and enjoyment of property, nuisance, or inverse condemnation or for injunctive or other extraordinary or equitable relief. It is further agreed that LESSOR shall have no duty to avoid or mitigate such damages by, without limitation, setting aside or condemning buffer lands, rerouting air traffic, erecting sound or other barriers, establishing curfews, noise or other regulations, relocating airport facilities or operations or taking other measures, except to the extent, if any, that such actions are validly required by government authority. LESSOR reserves these rights from the Premises an easement for flight of aircraft in or adjacent to the airspace above the Premises and for the existence and imposition over, on and upon said Premises of noise, light, vibrations, smoke, fumes, odors, air currents, electronic or other emissions, discomfort, inconvenience, interference with use and enjoyment, and any consequent reduction in market value which may occur directly or indirectly as a result of aviation, airport or airport-related operations at or otherwise associated with use of the Airport. LESSEE accepts the Premises subject to the risks and activities hereinabove described.

**Airport Hazards.** LESSEE by accepting this Agreement agrees for itself, its successors and assigns, that it shall not make use of the Premises in any manner which may interfere with the landing and taking off of aircraft from the Airport or otherwise constitute a hazard. In the event this Agreement Term is breached, LESSOR reserves the right to enter upon the Premises and cause the abatement of such interference at the expense of LESSEE without liability to LESSOR of any kind.

**Airport Rules and Regulations, Policies, and Standard Operating Procedures.** LESSOR shall have the right to adopt, amend and enforce reasonable airport rules and regulations, policies and standard operating procedures with respect to use of and the conduct and operation of the Airport, its buildings and facilities or any improvements within the present or future boundaries of the Airport, which LESSEE agrees to observe and obey.

**Federal Aviation Administration Requirements.** LESSOR and LESSEE agree that the requirements of the FAA set out below are approved by both parties, and if applicable, LESSEE agrees to comply with all FAA requirements with respect to its operations, use of the Airport and this Agreement:

(a) The LESSEE, for itself and its representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that in the event facilities are constructed, maintained or otherwise operated on said property described in this Agreement for a purpose for which a Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, the LESSEE shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

(b) The LESSEE, for itself and its representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that: (1) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the LESSEE shall use the Premises in compliance with all other requirements imposed by or pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

(c) The LESSEE assures that it shall undertake an affirmative action program if required by 14 CFR Part 152, Subpart E, to insure that no person shall on the grounds of race, creed, color, national origin, or sex be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. The LESSEE assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this subpart. The LESSEE assures that it shall require that its covered suborganizations provide assurances to the LESSEE that they similarly shall undertake affirmative action programs, and that they shall require assurances from their suborganizations, as required by 14 CFR Part 152, Subpart E, to the same effect.

(d) It is understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right within the meaning of Section 308 of the Federal Aviation Act of 1958.

(e) LESSEE agrees to furnish service on a fair, equal and not unjustly discriminatory basis to all users thereof, and to charge fair, reasonable and not unjustly discriminatory prices for each unit or service; PROVIDED, that LESSEE may make reasonable and nondiscriminatory discounts, rebates or other similar types of price reductions to volume purchasers.

(f) LESSOR reserves the right (but shall not be obligated to LESSEE) to maintain and keep in repair the landing area of the airport and all publicly-owned facilities of the airport, together with the right to direct and control all activities of LESSEE in this regard.

(g) LESSOR reserves the right further to develop or improve the landing area and all publicly-owned air navigation facilities of the airport as it sees fit, regardless of the desires or

views of LESSEE, and without interference or hindrance.

(h) LESSOR reserves the right to take any action it considers necessary to protect the aerial approaches of the airport against obstruction, together with the right to prevent LESSEE from erecting, or permitting to be erected, any building or other structure on the airport which, in the opinion of LESSOR, would limit the usefulness of the airport or constitute a hazard to aircraft.

(i) During time of war or national emergency LESSOR shall have the right to enter into an agreement with the United States Government for military or naval use of part or all of the landing area, the publicly-owned air navigation facilities and/or other areas or facilities of the airport. If any such agreement is executed, the provisions of this instrument, insofar as they are inconsistent with the provisions of the agreement with the Government, shall be suspended.

(j) It is understood and agreed that the rights granted by this agreement shall not be exercised in such a way as to interfere with or adversely affect the use, operation, maintenance or development of the airport.

(k) There is hereby reserved to LESSOR, its successors and assigns, for the use and benefit of the public, a free and unrestricted right of flight for the passage of aircraft in the air space above the surface of the Premises herein conveyed, together with the right to cause in said airspace such noise as may be inherent in the operation of aircraft now known or hereafter used for navigation of or flight in the air, using said airspace or landing at, taking off from or operating on or about the airport.

(l) This Agreement shall become subordinate to provisions of any existing or future agreement between the LESSOR and the United States of America or any agency thereof relative to the operation, development or maintenance of the airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the development of the Airport.

**Subordination to Agreements with the U.S. Government.** This Agreement is subject and subordinate to the provisions of any agreements heretofore or hereafter made between LESSOR and the United States Government relative to the operation or maintenance of Airport, the execution of which has been required as a condition precedent to the transfer of federal rights or property to LESSOR for Airport purposes, or the expenditure of federal funds for the improvement or development of Airport, including the expenditure of federal funds for the development of Airport in accordance with the provisions of the Federal Aviation Act of 1958, as it has been amended from time to time. LESSOR covenants that it has no existing agreements with the United States Government in conflict with the express provisions hereof.

**Non-Waiver of Rights.** No waiver or default by either party of any of the terms, warranties, covenants and conditions hereof to be performed, kept and observed by the other party shall be construed as, or shall operate as, a waiver of any subsequent default of any of the terms, warranties, covenants or conditions herein contained, to be performed, kept and observed by the

other party.

**Captions.** The captions/headings of the Sections of this Agreement are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope or intent of any provisions of this Agreement, and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.

**Severability and Invalid Provisions.** In the event any term, covenant, condition or provision herein contained is held to be invalid by any court of competent jurisdiction, the invalidity of any such term, covenant, condition or provision shall in no way affect any other term, covenant, condition or provision herein contained; provided, however, that the invalidity of any such term, covenant, condition or provision does not materially prejudice either the LESSOR or the LESSEE in their respective rights and obligations contained in the valid terms, covenants, conditions or provisions in this agreement.

**Waiver of Claims.** LESSEE hereby waives any claim against LESSOR and its officers or employees for loss of anticipated profits, consequential or incidental damages, or claim for attorney fees caused by or resulting any suit or proceedings directly or indirectly attacking the validity of Agreement or any part thereof, or the manner in which it is executed or performed, or by any judgment or award in any legal proceeding declaring this Agreement null, void or voidable, or delaying the same of any part thereof, from being carried out. This waiver extends to all claims, whether the supporting legal theory lies in common law or has a statutory basis.

**Incorporation of Exhibits.** All exhibits referred to in this Agreement are intended to be and are hereby specifically made a part of this Agreement.

**Incorporation of Required Provisions.** The parties incorporate in this Agreement by this reference all provisions lawfully required to be contained herein by any governmental body or agency.

**Non-Liability of Agents and Employees.** No manager, member, officer, agent or employee of either party to this Agreement shall be charged personally, or held contractually liable by or to the other party under the terms or provisions of this Agreement, or because of any breach thereof or because of its or their execution or attempted execution.

**Successors and Assigns Bound.** This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto where permitted by this Agreement.

**Time of Essence.** Time is of the essence in this Agreement.

**Relationship of the Parties.** It is understood LESSEE is not in any way or for any purpose a partner or joint venturer with or an agent of LESSOR. LESSEE shall act as an independent contractor in the performance of its duties pursuant to this Agreement.

**Interpretation.** LESSOR and LESSEE hereby agree that this Agreement shall not be construed or interpreted in favor of either party on the basis of preparation.

**Kansas Laws to Govern.** This Agreement is created in the State of Kansas and the terms and conditions herein contained shall at all times be governed, interpreted and construed under and in accordance with the laws of the State of Kansas, and venue for resolution of any issue pertaining to this Agreement shall be in Sedgwick County, Kansas.

#### **45. FORCE MAJEURE**

Anything contained in this Agreement to the contrary notwithstanding, neither Party shall be deemed in default with respect to the performance of any of the terms, covenants, and conditions of this Agreement if non-performance shall be due to any "Act of God" or "Force Majeure" which terms are defined for purposes of this Agreement as strikes, lockouts, civil commotion, riots, material or labor restrictions by any governmental authority, explosions, earthquakes, fire, floods, catastrophic weather events, acts of the public enemy, wars, acts of terrorism, or insurrections. The occurrence of any Act of God or Force Majeure shall be excused for the period of the delay thus occasioned and the period for performance of any such acts shall be extended for a period equivalent to the period of such delay.

#### **46. THIRD PARTY RIGHTS**

It is agreed between the parties that it is not intended by any of the provisions of this Agreement to create for the public or any member thereof the status of a third-party beneficiary, or to authorize anyone not a party to this Agreement to maintain a suit for damages pursuant to the terms or provisions of this Agreement.



#### **47. QUIET ENJOYMENT**

LESSOR agrees that, on payment of the rentals and fees and performance of the terms, covenants, conditions and agreements on the part of LESSEE to be performed in this Agreement, LESSEE shall have the right to peaceably occupy and enjoy the Premises, subject however, to the provisions otherwise set out in this Agreement.

#### **48. HOLD OVER**

In the event LESSEE holds over the lease of the Premises, any rights granted after expiration of this Agreement without any written renewal of it shall not be deemed to operate as a renewal or extension of this Agreement, but shall only create a month-to-month arrangement, which may be terminated within thirty (30) day notice by LESSOR or LESSEE.

#### **49. SURRENDER OF POSSESSION AND RESTORATION**

The LESSEE, at the end of the Term, shall either turn over ownership of all equipment, systems, cabling, etc. installed by the LESSEE to the LESSOR or remove all equipment, systems, cabling, etc. and restore the Premises to a pre-installation condition, at the discretion of the LESSOR. All costs to accomplish either of these situations shall be at no cost to the LESSOR.

#### **50. INTENTION OF PARTIES**

This Agreement is intended solely for the benefit of LESSOR and LESSEE and is not intended to benefit, either directly or indirectly, any third party or member(s) of the public at large. Any work done or inspection of the Premises performed by LESSOR is solely for the benefit of LESSOR and LESSEE.

Nothing contained herein shall be deemed or construed by the parties hereto, or by any third party, as creating the relationship of principal and agent, partners, joint ventures, or any other similar such relationship, between the parties hereto. Further, non-parties to this Agreement may not maintain a suit for personal injuries or property damage pursuant to the terms or provisions of the Agreement. The parties shall understand and agree that neither the method of payment, nor any other provision contained herein, nor any act(s) of the parties hereto creates a relationship

other than the relationship of the LESSOR and the LESSEE.

## **51. ENTIRE AGREEMENT**

The parties understand and agree that this instrument contains the entire Agreement between them. The parties hereto further understand and agree that the other party and its agents have made no representations or promises with respect to the Agreement or the making or entry into this Agreement, except as expressed in this Agreement, and that no claim or liability or cause for termination shall be asserted by either party against the other and such party shall not be liable by reason of, the making of any representations or promises not expressly stated in this Agreement, any other written or oral agreement with the other being expressly waived.

The individuals executing this Agreement personally warrant that they have full authority to execute this Agreement on behalf of the entity for which they are acting herein.

The parties hereto acknowledge that they have thoroughly read this Agreement, including any exhibits or attachments hereto, and have sought and received whatever competent advice and counsel deemed necessary for them to form a full and complete understanding of all rights and obligations herein.

## **52. AMENDMENT**

No amendment, modification, or alteration of the terms of this Agreement shall be binding unless the same is in writing, dated subsequent to the date hereof, and duly executed by the parties hereto.

## **53. APPROVAL, CONSENT, DIRECTION OR DESIGNATION BY LESSOR**

Wherever under this Agreement, approvals, consents, directions, or designations are required or permitted, such approvals, consents, directions, or designations required or permitted under this Agreement shall be performed by the Director of Airports, or his/her authorized representative. Approvals, consents, directions, or designations made at any time by the Director of Airports, and from time to time, may be withdrawn or modified by notice from LESSOR to LESSEE.


IN WITNESS WHEREOF, the parties hereto have executed this agreement the day and year first above written.

ATTEST:

THE WICHITA AIRPORT AUTHORITY  
WICHITA, KANSAS

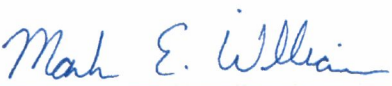
By \_\_\_\_\_  
Karen Sublett, City Clerk


By \_\_\_\_\_  
Jeff Longwell, President  
"LESSOR"

By  \_\_\_\_\_  
Victor D. White, Director of Airports

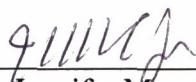
ATTEST:

GARVER, LLC

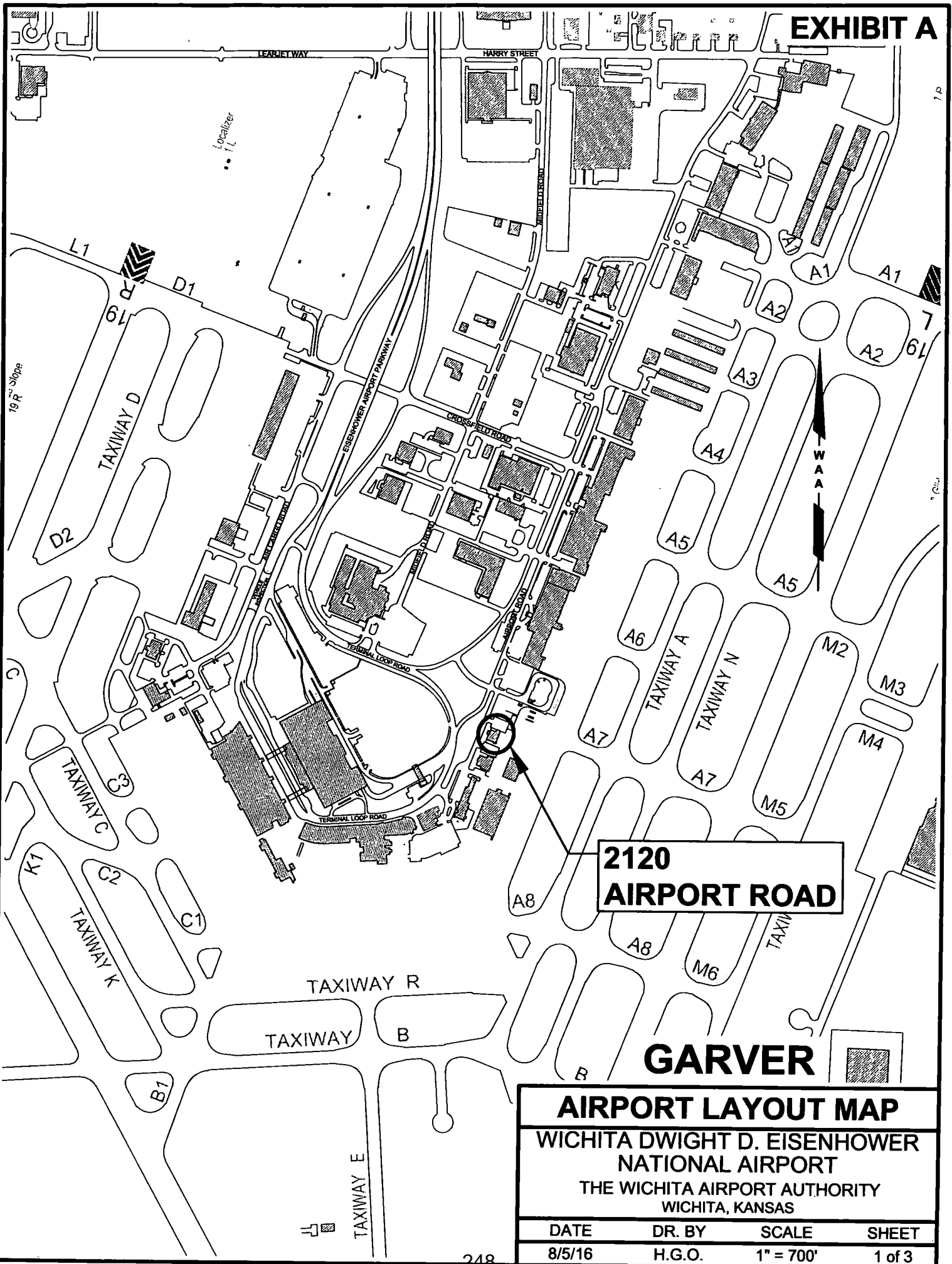
By  \_\_\_\_\_  
Title Aviation Business Team Leader

By  \_\_\_\_\_  
Michael J. Griffin, PE,  
Senior Vice President  
"LESSEE"

Digitally signed by  
Michael J. Griffin  
Date: 2016.09.30  
11:52:36-05'00'

APPROVED AS TO FORM:  \_\_\_\_\_ Date: 10-3-16  
Jennifer Magaña,  
City Attorney and Director of Law

# EXHIBIT A



AIRPORT ROAD

2120  
VACANT

RESERVED  
PARKING

GARVER

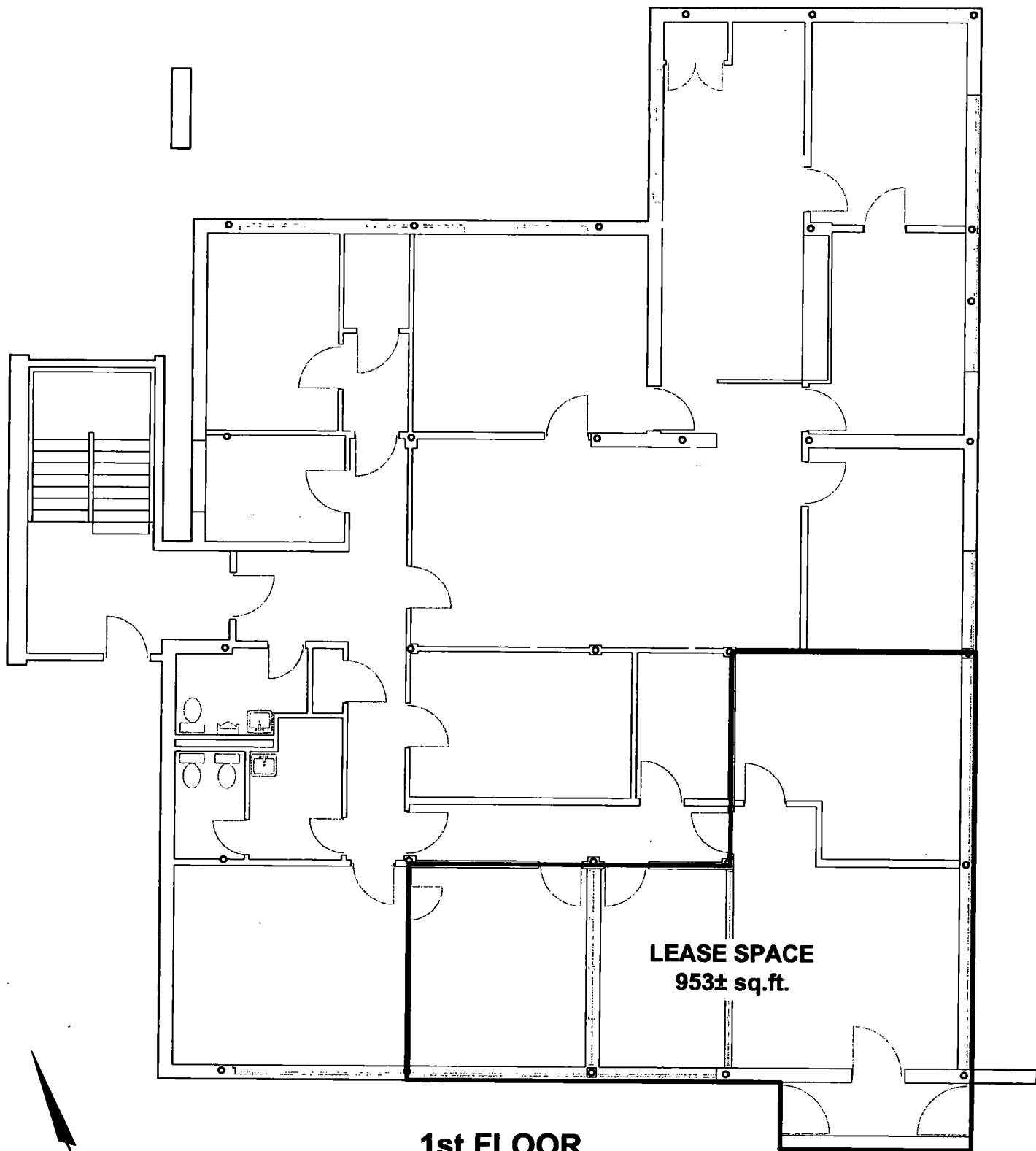
2140  
AIRPORT RD.  
GARMIN

**SITE LOCATION**

WICHITA DWIGHT D. EISENHOWER  
NATIONAL AIRPORT

THE WICHITA AIRPORT AUTHORITY  
WICHITA, KANSAS

DATE	DR. BY	SCALE	SHEET
8/5/16	H.G.O.	1" = 1900'	2 of 3



**1st FLOOR**

**GARVER**

**LEASE FLOOR PLAN**

**WICHITA DWIGHT D. EISENHOWER  
NATIONAL AIRPORT**

**THE WICHITA AIRPORT AUTHORITY  
WICHITA, KANSAS**

DATE	DR. BY	SCALE	SHEET
8/5/16	H.G.O.	1" = 10'	3 of 3

City of Wichita  
City Council Meeting  
October 18, 2016

**TO:** Wichita Airport Authority

**SUBJECT:** Caldwell Transport Company, LLC  
Use and Lease Agreement  
Wichita Dwight D. Eisenhower National Airport

**INITIATED BY:** Department of Airports

**AGENDA:** Wichita Airport Authority (Consent)

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**Recommendation:** Approve the Agreement.

**Background:** Caldwell Transport Company, LLC (CTC), a seven-year old company, has been serving airports by delivering lost luggage to passengers on behalf of airlines. Currently, the company provides delivery services to 14 airports. The corporate office is located in Oklahoma City. The airlines operating out of the Wichita Dwight D. Eisenhower National Airport (Airport) have contracted with CTC to do the same service here.

**Analysis:** CTC is desirous of leasing an office in the multi-tenant office facility located at 1761 Airport Road, Suite 300. CTC will also use Permit Lot C for loading due to its close proximity to the terminal. The term of the agreement is a five-year period, beginning on October 1, 2016.

**Financial Considerations:** The annual facility rental rate for the use of the 158 sq. ft. office is \$13 per sq. ft. In addition, an annual fee of \$2,400 for the use of Lot C will be charged. The combined new annual revenue to the WAA is \$4,454.

**Legal Considerations:** The Agreement has been reviewed and approved as to form by the Law Department.

**Recommendations/Actions:** It is recommended that the Wichita Airport Authority approve the Agreement and authorize the necessary signatures.

**Attachment:** Agreement.



# **WICHITA AIRPORT AUTHORITY**

## **USE AND LEASE AGREEMENT**

**By and Between**

**WICHITA AIRPORT AUTHORITY  
Wichita, Kansas**

**and**

**CALDWELL TRANSPORT COMPANY, LLC**

**Use and Lease Agreement  
Multi-Tenant Office Facility  
1761 Airport Road  
Wichita Dwight D. Eisenhower National Airport  
Wichita, Kansas**



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THIS USE AND LEASE AGREEMENT ("Agreement") is entered into this October 18, 2016, between The Wichita Airport Authority, Wichita, Kansas ("LESSOR") and Caldwell Transport Company, LLC ("LESSEE").

WHEREAS, LESSOR is a quasi-governmental entity authorized under the laws of the State of Kansas to own and operate one or more airports, with full, lawful power and authority to enter into binding legal instruments by and through its governing body; and

WHEREAS, LESSOR operates and owns an existing air cargo facility located at 1761 Airport Road and the use of Lot C parking lot on Wichita Dwight D. Eisenhower National Airport, hereinafter referred to as the Airport; and

WHEREAS, LESSOR desires to lease to LESSEE and LESSEE is desirous of renting from LESSOR certain premises at the Airport to be used in connection with LESSEE's business of air freight carrier and handling services.

NOW, THEREFORE, in consideration of the mutual promises and agreements herein set forth, LESSOR and LESSEE do hereby covenant and agree as follows:

## **1. PREMISES**

LESSOR does hereby lease to LESSEE the Premises located at 1761 Airport Road, Suite 300 on Wichita Dwight D. Eisenhower National Airport, consisting of 158 square feet of office space, all referred to herein as the Premises, as outlined on Exhibit "A", attached hereto and made a part hereof.

## **2. INITIAL TERM**

The term of this Agreement shall commence on October 1, 2016, and shall continue for a period of five (5) years ("Initial Term"), with the Initial Term expiring on September 30, 2021, unless otherwise terminated under provisions agreed to herein.

It is acknowledged by LESSOR that, as of the commencement date of this Agreement, LESSEE is under contract with the airlines serving the Airport for delivering lost baggage. It is further acknowledged if the LESSEE and/or the airlines serving the Airport cease operations, then LESSEE may cancel this Agreement, by providing written notice to LESSOR no less than sixty (60) days prior to the termination and continuing to pay rent at the rate provided in Section 3 prorated until the Premises are vacated.

### **3. FACILITY RENT DURING INITIAL TERM AND OPTION TERMS**

Facility rent for the office space, consisting of 158 sq. ft. of leased space, shall be at the annual rate of thirteen dollars (\$13.00). This facility rent shall result in an annual payment of \$2,054.04, payable in monthly installments of \$171.17.

In addition, LESSEE is granted permission to use the designated area, as set forth and shown on the attached Exhibit "B" and at no other locations without the express written permission of the Director of Airports. Subsequent to the grant of this Agreement, upon mutual consent of both parties, it is understood and agreed that changes may be made to Exhibit "B", under the written authority of the Director of Airports, without requiring formal amendment to the Agreement. This granted permission to use the designated area shall result in an annual payment of \$2,400, payable in monthly installments of \$200.00.

The combined cost for the **office facility rent** and the **granted permission to use the designated area** will result in an annual payment of \$4,454.04 payable in monthly installments of \$371.17.

### **4. OTHER FEES AND CHARGES**

It is understood and agreed by LESSEE that LESSOR may assess fees and charges to LESSEE according to rates established by LESSOR's Schedule of Fees and Charges. Such Schedule shall be amended from time to time by action of the LESSOR.

### **5. PAYMENT PROCEDURE**

LESSEE shall pay to LESSOR in advance on the first day of each month, without demand or invoicing, for Facility Rent for the Premises as set forth herein. LESSEE shall pay to LESSOR all other fees within thirty (30) days of the date of invoices of all amounts due as set forth in this Agreement. In the event LESSEE fails to make payment within ten (10) days of the dates due as set forth in this Agreement, and after LESSOR has provided LESSEE with written notice and LESSEE does not make payment within seven (7) calendar days after the date said notice is received, then LESSOR, may charge LESSEE a monthly service charge of twelve percent (12%) on an annual basis for any such overdue amount, unless a lesser sum is set as the maximum allowable under state statutes on any such overdue amount, plus reasonable attorneys' and administrative fees incurred by LESSOR in attempting to obtain payment. If LESSOR does not receive payment within seven (7) days of the date of receipt of said written notice, then the monthly service charge shall retroactively commence on the date the payment was originally due.

LESSEE shall make all payments to the Wichita Airport Authority and in a form acceptable to LESSOR. ACH direct deposit is preferred. Bank account and routing information is available upon request. Payments made by check shall be delivered or mailed to:

Wichita Airport Authority  
2173 Air Cargo Road  
Wichita, Kansas 67209

or such other address as designated in writing.

Bills, notices and invoices may be delivered to the LESSEE by mail or personal delivery at:

Caldwell Transport Company  
4411 Highline Blvd.,  
Suite 102  
Oklahoma City, OK 73108

Or

or such other address as designated in writing.

## **6. LESSEE'S IDENTITY**

LESSEE must be a natural person or an entity, firm, company, corporation, partnership, limited liability company, or a joint venture which has substance under State of Kansas Law and a specific legal identity and business purpose as registered with the Secretary of State in the LESSEE's state of business residence.

## **7. PERMITTED USE OF PREMISES**

LESSEE shall have the right of ingress and egress, in common with others for the benefit of its employees, invitees, contractors, agents and representatives, to be exercised in a reasonable manner. This right of ingress and egress is granted for activities incidental or related to LESSEE'S approved activities, and for no other purposes except as may be approved in writing by LESSOR. This right is subject to federal, state and local security and safety requirements and standards. As required by Kansas state statute, it is understood and agreed that the Premises shall be used and occupied for aviation purposes or purposes incidental or related thereto and the primary purpose shall be for the operation of lost baggage service and general office space of the LESSEE in the administration of its business.

LESSEE recognizes that other tenants now and hereafter may occupy other portions of the Airport, and that such other tenants shall have the right in common with LESSEE to use public roadways, streets, ramps, taxiways, runways, access gates, lighting, beacons, navigational aids, or other conveniences for aeronautical operations, and these common facilities are not under an exclusive use lease; and LESSEE shall conduct its operations in such a manner as to not impede access by others to these common facilities, nor in any other way interfere with, nor disrupt the business of other tenants or the quiet enjoyment of their leasehold interests at the Airport.

LESSOR reserves the right to grant and/or permit other parties the right to use any portion of the Airport, except that described in Section 1, Premises, for any permitted purpose, and upon any fair and non-discriminatory terms established by the LESSOR.

LESSEE, its affiliated entities, subsidiaries, employees, agents, representatives, contractors, and subcontractors, will not transact or otherwise engage in any other activities, business, and/or services on or from the Premises, except as described in this Agreement, unless such is provided for by a separate written approval, or amendment to this Agreement, and subject to approval by LESSOR.

The parties acknowledge that this lease is for office space, and does not include airfield access.

## 8. PROHIBITED USE OF PREMISES

The Premises shall not be used for any purpose not expressly authorized in Section 7, Permitted Use of Premises. The following operations, services and concessions shall be specifically prohibited on or from the Premises or any other location at the Airport:

- (a) Commercial catering, restaurant and/or lounge concessions.
- (b) Commercial (for hire) ground transportation;
- (c) Commercial "paid" parking;
- (d) Commercial hotel or lodging;
- (e) Commercial outdoor advertising;
- (f) No transient, guest, or overnight aircraft storage;
- (g) Sale or lease of non-aviation products and services;
- (h) Sale of aviation fuels, or other fuel or lubricant products;
- (i) Any services associated with or resembling fixed-base operation services;
- (j) Revenue-producing communication systems or systems not directly applicable to LESSEE's operations on the Premises;
- (k) Automobile rental service;
- (l) Any activity considered by LESSOR to not be aviation purposes or purposes incidental or related thereto.

LESSEE, its affiliated entities, subsidiaries, employees, agents, representatives, contractors, and subcontractors, shall not transact or otherwise engage in any other activities, business, and/or services on or from the Premises, except as described in this Agreement, unless such is provided for by a separate written approval, or amendment to this Agreement, and subject to approval by LESSOR.

No Unlawful Activity. This Agreement shall not be construed as authorizing the LESSEE to engage in any activity that is unlawful, or which is in material respects contrary to or in conflict with, any federal, state or local law, ordinance, rule or regulation, or standard operating procedure, and the LESSEE does hereby indemnify and hold the LESSOR harmless from any act or failure by the LESSEE in respect to this obligation.

No Grant of Concession. This Agreement is not intended to, nor shall it be construed as, authorizing the Lessee to conduct a concession on the Airport.

No Unauthorized Use. The LESSEE shall not conduct or permit any employee to conduct any business or commercial operation not herein or otherwise authorized by the LESSOR. For a violation of this paragraph, in addition to the termination provisions hereunder, the rent shall be doubled while such default continues.

## **9. NON-EXCLUSIVE USE OF CERTAIN FACILITIES**

LESSOR grants the LESSEE, in common with other users, the non-exclusive use of the Airport and appurtenances, together with all facilities, improvements and services which are now, or may hereafter be provided at, or in connection with the Airport. This use is limited to the purposes for which such facilities were designed and constructed, and for no other purposes, and is available only from time to time and on a non-exclusive use basis, according to the discretionary operational decisions of LESSOR. These facilities include, but are not limited to roadways, streets, ramps, taxiways, runways, access gates, lighting, beacons, navigational aids, or other conveniences for aeronautical operations which are not exclusively leased areas of the LESSEE or of any other tenant on the Airport.

## **10. LESSEE'S RIGHTS AND PRIVILEGES**

LESSEE shall have the following rights and privileges on the Premises and on the Airport:

- (a) The rights to install, operate, repair, and store upon the Premises all personal property and fixtures necessary for the conduct of LESSEE's lawful business.
- (b) The right of ingress and egress to and from the Premises, which rights shall extend to LESSEE's invitees, contractors, subcontractors, agents, representatives and employees; subject, however, to all reasonable security regulations;
- (c) The right in common with others authorized to do so, to use the common areas of the Airport.



## 11. LESSOR'S RIGHTS AND PRIVILEGES

LESSOR expressly reserves from the Premises:

- (a) Mineral Rights. All gas, oil and mineral rights in and under the soil.
- (b) Water Rights. All statutory, exempt, vested, and granted appropriation rights for the use of water, and all rights to request further appropriations for the Premises.
- (c) Airspace. A public right of flight through the airspace above the surface of the Premises. This public right of flight will include the right to cause or allow in said airspace, any noise inherent in the operation of any aircraft used for navigation or flight through said airspace or landing at, taking off from, or operation on the Airport. No liability on the part of LESSOR or any Tenant will result from the exercise of this right.
- (d) Navigational Aids. The right to install, maintain and modify and/or permit others to install, maintain and modify on the Premises visual and electronic navigational aids.
- (e) Entry and Inspection of Premises. The right of LESSOR, its authorized officers, employees, agents, contractors, subcontractors, authorized government agents, or other representatives to enter upon the Premises:
  - (1) To inspect at reasonable intervals during regular business hours upon reasonable prior notice (or any time in case of emergency or lawful investigation) to determine whether LESSEE has complied, and is complying with the terms and conditions of this Agreement;
  - (2) To inspect, during regular business hours upon reasonable prior notice, Premises, facilities, and equipment for compliance with laws, regulations and/or codes of the federal, state or local government, airport rules and regulations and airport standard operating procedures; and
  - (3) To construct or erect new facilities, or to perform maintenance, repair, or replacement relating to the Premises or any facility thereon, as may be required and necessary, but LESSOR shall not be obligated to exercise this option.
- (f) Radio/Wireless Communication Systems. The right to approve or withhold approval of any use of fixed RF Systems for the transmission of radio frequency signals in/on the Premises.
- (g) General Provisions. The right to exercise any and all rights set out in Section 38, General Provisions.
- (h) Signage. The right to enter onto the premises for installation, and the right to install any signage on the Premises required by law, order, rule, regulation, Airport Security Program or federal directive.

Provided that exercise by LESSOR of any such reserved rights (a) through (h) shall be without expense to the LESSEE and shall not unreasonably or materially interfere with LESSEE's use of

the Premises and shall not delay LESSEE in the exercise of its rights or the performance of its duties hereunder or increase the costs of such performance.

## **12. COOPERATION WITH AIRPORT DEVELOPMENT**

LESSEE understands and agrees that LESSOR may pursue Airport development, improvements and maintenance activities from time-to-time that may affect the Premises and other areas of the Airport. LESSEE agrees to work cooperatively and in good faith with the LESSOR and other tenants and contractors in development, improvement and maintenance activities to minimize any disruptions. If requested by the LESSOR, LESSEE shall cooperate with and assist the LESSOR to the greatest extent possible in the development and implementation of any plans, designs, ingress/egress, or transition that may arise in connection with such Airport development, improvement, and maintenance activities. LESSOR may temporarily or permanently close, re-route, or consent to the closing or re-routing of any method of ingress or egress on the Airport, so long as the means of ingress and egress to the Airport are maintained. LESSOR may temporarily close the runway, taxiways, ramps or portions thereof for purposes of maintenance, replacement, re-construction or expansion. Exercise by LESSOR of any such Airport development, improvement, or maintenance shall be without expense to LESSEE, but LESSEE shall not be entitled to any compensation for loss of revenue, business interruption, relocation, temporary or storage rental.

## **13. TITLE TO FACILITIES, IMPROVEMENTS AND FIXTURES**

It is understood and agreed that title to the Premises and to all existing and future structures, facilities, improvements and fixtures shall be, and shall remain, exclusively with LESSOR, the Wichita Airport Authority.

LESSEE shall, without cost to LESSOR, furnish and install all non-attached furniture, movable partitions, decorations, accessories, equipment, and tools necessary to conduct its business, which shall retain status as personal property even though temporarily affixed to the Premises. Title/ownership to non-attached personal property shall remain with LESSEE.

The term "fixtures", whenever used in this Agreement, shall be construed to include all structures and fixed systems and equipment erected or installed upon the Premises, all fencing, grading and pavement, all underground wires, cables, pipes, conduits, tanks, drains and drainages; and all other property of every kind and nature which is permanently affixed to the Premises, except LESSEE's personal property.

All facilities, structures fixtures and improvements, and alterations and additions to the Premises, excluding personal property of LESSEE, placed at the expense of LESSEE, shall remain upon and be surrendered with the Premises as a part thereof, on any termination of this Agreement, for any cause, and shall remain the property of the LESSOR.

#### **14. LIENS**

LESSEE shall take or cause to be taken all steps that are required or permitted by law in order to avoid the imposition of any lien upon the Premises or any improvements thereon. Should actions of the LESSEE cause any lien be placed on the Premises or any improvements thereon, LESSEE shall such cause to be removed. This obligation includes, but is not limited to, tax liens and liens arising out of or because of any financing, construction or installation performed by or on behalf of LESSEE or any of its contractors or subcontractors upon LESSEE's Premises or arising out of or because of the performance of any work or labor to it or them at said Premises or the furnishing of any materials to it or them for use at said Premises. Should actions of the LESSEE cause any such lien be made or filed, LESSEE shall bond against or discharge the same within thirty (30) days after actual notice of the same from any source, whether from LESSOR or otherwise, and provide written proof of discharge or bonding to LESSOR within that time. LESSEE acknowledges that LESSEE acquires no equity interest in the Premises, notwithstanding its construction of improvements on the Premises. Although such improvements accrue to the LESSOR, improvements are for the enhancement of LESSEE's use of the Premises. LESSEE has no agency authority to act on behalf of LESSOR for any such construction. LESSEE may not mortgage or pledge as collateral its leasehold interest herein without the prior written consent of the LESSOR.

LESSOR may consent, upon LESSEE's written request, to an assignment of rents to a governmentally regulated and insured commercial lender as partial security for financing of LESSEE's activities on the Premises, which assignment is intended to be a present transfer to such lender of all of LESSEE's rights to collect and receive rents and charges from approved users, operators, sublessees and permittees. Lender(s) shall have no rights to assign this Agreement or sublease the Premises without the prior written consent of the LESSOR as required under Section 17, Assignment and Section 18, Subleasing, PERMITTING AND CONTRACTING. Upon LESSEE's written consent LESSOR agrees to give Lender(s) notice of any default or termination of the Agreement, and allow Lender(s) the same opportunity as the LESSEE under the Agreement to correct any condition or cure any default. Nothing in this Section is intended to relieve the LESSEE of its obligations under this Agreement.

## **15. TAXES, LICENSES AND PERMITS**

LESSEE agrees to pay all present and future taxes or, in lieu of taxes, special assessments now or hereafter levied or assessed (1) upon the Premises and facilities, (2) upon property owned or possessed by LESSEE and situated on the Premises, and (3) upon LESSEE's interest in or use of the Premises. LESSEE shall defend, indemnify and save LESSOR and the City of Wichita, Kansas harmless from any claims or liens in connection with such taxes, obligations in lieu of taxes or assessments.

LESSEE shall promptly pay all taxes, excises, license fees and permit fees of whatever nature applicable to its operation on the Premises. LESSEE may elect, however, at its own cost and expense, to contest any such tax, excise, levy, or assessment. LESSEE shall keep current all Federal, State or local licenses, operating certificates or permits required for the conduct of its operations. LESSEE represents and warrants to LESSOR that it has obtained all license, franchise, operating certificates or other agreements or permits necessary to operate LESSEE's operation in accordance with the terms of this Agreement, and LESSEE covenants to keep all such licenses, franchises, permits, operating certificates and other agreements in full force and effect during the Term of this Agreement.

LESSEE shall pay all lawful taxes and assessments which, during the Term hereof, may become a lien upon or which may be levied by the State, County, City or any other tax levying body, upon the leased Premises or upon any taxable interest of LESSEE acquired in this lease agreement, or any taxable possessory right which LESSEE may have in or to the leased Premises, including any improvements or facilities located on the Premises. LESSEE shall also pay all lawful taxes and assessments on taxable property, real or personal, owned by LESSEE in and about said Premises. Nothing in this Section shall prevent LESSEE from contesting the legality, validity or application of any such tax or assessment to the full extent LESSEE may be lawfully entitled so to do.

## 16. UTILITIES

The cost of electricity, gas, and water shall be included as a part of the lease rental rate. Any other costs, such as telephone and cable, but not limited to these, shall be at LESSEE's initiation and expense. LESSOR shall not be liable to LESSEE for damages arising out of any cessation or interruption of gas, water, electricity, telephone, or other utility service during the lease term or any extension thereon. LESSOR shall take reasonable steps to promptly restore such services.

LESSOR is the only entity allowed to install or remove any cabling. Cabling includes, but is not limited to, any type of telecommunications or network cable such as CAT3, CAT5, CAT6; fiberoptics cable; and/or coaxial cable. Cabling for basic phone service shall be provided as part of the rental rate. However, should additional network cable, coaxial for security or fiber optic cable, be required for LESSEE's operation, LESSEE shall be required to make arrangements with LESSOR, and such installation shall be at LESSEE's expense. It shall be LESSEE's responsibility to contract for services using such cables from LESSEE's preferred service provider.

Unless otherwise agreed upon in writing, if LESSEE requires utilities beyond that currently provided or that are available to be extended to the Premises boundary, LESSEE agrees to pay the full cost and expense associated with the upgrade/extension/installation of all such utilities related to its use of the Premises, and to comply with all provisions for maintaining such utilities.

The LESSOR reserves for itself the right to upgrade, extend, install, maintain and repair all utilities and services on or across the Premises, whether or not such services or utilities are for the benefit of LESSEE. The LESSOR shall take all reasonable care and diligence to protect existing improvements and utilities, and shall avoid to the greatest extent possible any unreasonable interference or interruption to LESSEE's operations.

All electrical, data and communications utilities installed or caused to be installed shall be underground, and no utility services or other cables or wires shall be installed on poles or otherwise above ground. Unless otherwise provided in this Agreement, all utilities and conduits or ducts installed by anyone on the Premises shall be considered fixtures as defined under Section 13, Title to Facilities, Improvements and Fixtures, and shall become the owned property of LESSOR.

Wastes not legally permitted and authorized for disposal into the storm and/or sanitary drainage system shall not be discharged, connected or introduced into storm and/or sanitary drains and the storm and/or sanitary drainage system. LESSEE shall take all reasonable precautions to prevent the discharge of material into any drainage system that would create interference with the flow therein, or that would cause a hazard or unlawful contamination thereto.

## **17. ASSIGNMENT**

With the exception of assignment to a parent or "holding" company or subsidiary, LESSEE shall have no right to assign or delegate any of its rights or duties pursuant to this Agreement without the prior written consent of LESSOR. Any assignment or delegation so made and so permitted shall be subject to all terms, conditions and other provisions of this Agreement. Any attempted assignment or delegation in violation of this provision shall be void and have no force or effect whatsoever.

## **18. SUBLEASING, PERMITTING AND CONTRACTING**

LESSEE shall not sublease, rent or permit any persons, firms or corporations to occupy any part of the Premises, or to provide any type of commercial or non-commercial operation, aviation or otherwise, on the Premises without having first received the prior written consent of LESSOR, granted only under the following conditions:

(a) Any arrangements must be in the form of a written instrument and must be for purposes and uses of the Premises as authorized under this Agreement, and shall be subject to the provisions of this Agreement. LESSEE shall submit a copy of such proposed instrument at the time of requesting consent of LESSOR.

(b) All sublease(s) must comply with Sections 7 and 8 of this Agreement, and shall be reviewed for compliance by LESSOR to that end. Any arrangement for the subleasing of space must be in conformance with the use of the Premises outlined in this Agreement, unless expressly approved otherwise in writing by LESSOR.

(c) LESSEE must keep current records on file and available for LESSOR's inspection, that describes the nature and document the legitimacy of the sublessee's business, including all current municipal, state, or local licenses or permits required for the conduct of sublessee's business.

(d) LESSEE hereby agrees that it shall incorporate language acceptable to LESSOR into all of its sublease agreements, placing on any sublessee and that sublessee's affiliated entities, customers, employees, invitees, contractors, and subcontractors similar restrictions, as may be appropriate to its approved uses as those which bind LESSEE and its use of the facility through this Agreement. LESSEE shall also incorporate and make reference to this Agreement, as may be amended from time to time, to ensure sublessee's operations and conduct are subject

to and are in compliance with the terms and conditions of this Agreement, as may be amended from time to time. Any sublease agreement shall explicitly state that it is subordinate to this Agreement, and that the sublessee shall never obtain rights in the Premises greater than those held by LESSEE under this Agreement, as amended. Any sublessee shall be specifically subject to eviction from the Premises as a result of termination, cancellation, or expiration of this Agreement, irrespective of sublessee's state of compliance with the terms of its sublease.

(e) LESSEE shall at all times during the term(s) of approved sublease(s), remain responsible to LESSOR for the compliance of its sublessees with the terms and conditions of any approved sublease and with this Agreement. LESSOR may look to LESSEE directly to satisfy any failure of sublessee to comply with these documents.

(f) Consent to one sublease permit or subcontract shall not be deemed consent to any subsequent sublease permit or subcontract. Prior written consent of the LESSOR shall be required for each sublease permit or subcontract executed by the LESSEE.

It is understood and agreed that this Section does not apply to third party hangar space lease/rental arrangements for non-commercial private use of aircraft storage, and office space related and incidental to the operation and administration thereof, as may be customary in the normal course of business as a commercial hangar operator.

## **19. LIABILITY INSURANCE**

LESSEE shall procure, maintain and carry, at its sole cost, in accordance with and for the Term of this Agreement all insurance, as required per the amounts as set forth below. Insurance shall be furnished by a company meeting the reasonable approval of the LESSOR. Policy deductible amounts also require reasonable approval of the LESSOR.

Insurance certificates shall be issued on a standard ACORD form or such other documentation as may be acceptable to LESSOR in its discretion and include the NAIC number of the insuring company. Each insurance company's rating, as shown in the latest Best's Key Rating Guide, shall be no less than A-VII, unless otherwise approved by the LESSOR, or from a Workers' Compensation pool approved by the State of Kansas. Insurance certificates must be received and approved by the LESSOR prior to occupancy. LESSOR retains the right to require changes in the character, coverages and amounts of coverage commensurate with changes in the LESSEE'S use of the Premises. All policy deductibles shall be shown on the certificate of insurance and meet the approval of the LESSOR.

The failure of LESSOR to reject the LESSEE'S proffered insurance shall not be deemed to constitute an acceptance by the LESSOR of deficient insurance coverage. If the LESSEE fails to procure or maintain any of the specified coverages the LESSOR has the right, but not the obligation, to secure the coverage and charge the cost to the LESSEE along with a 20% administrative fee.

The LESSEE shall be responsible for determining the types and limits of insurance coverage required by any approved SUBLESSEE, permittee or contractor of the LESSEE commensurate with the type of activity and associated risk levels. At a minimum, any SUBLESSEE shall carry Workers' Compensation as required by statute, general liability (minimum of \$1,000,000 per occurrence) and automobile liability (minimum of \$1,000,000 combined single limit). LESSEE shall require in any approved sublease that the Wichita Airport Authority and the City of Wichita shall be added as primary and non-contributory additional insureds on the SUBLESSEE'S general liability policy.

The requirements, procurement and carrying of the required insurance shall not limit any of the LESSEE's obligations or liability under this Agreement or as a matter of law.

Where "minimum limits" of insurance are specified in this Section, such minimum insurance limits are required and considered by LESSOR to be the lowest insured amounts acceptable under this Agreement. The LESSEE is not limited or restricted whatsoever in securing additional insurance coverage and higher insured limits than those specified herein if, at the LESSEE's determination and discretion and commensurate with the type of activity and associated business and operational risk, additional coverage and higher limits are necessary and appropriate. Any such additional coverage and higher limits shall be deemed to be required by this Agreement.

Insurance shall include the following terms, conditions and minimum limits:

a) WORKERS' COMPENSATION

LESSEE shall maintain Workers' Compensation insurance to cover the statutory requirements of the Workers' Compensation laws of the State of Kansas for its operations on the Premises, and when applicable, to Federal Laws and Voluntary Compensation and Employer's Liability (including occupational disease) coverage.

b) AUTOMOBILE LIABILITY

LESSEE shall maintain automobile insurance, which shall include all owned, non-owned and hired automobiles used on the Premises, and shall have minimum bodily injury and property damage limits as outlined herein.

Combined Single Limit

\$1,000,000 Each Accident



c) COMMERCIAL GENERAL LIABILITY

LESSEE shall maintain commercial general liability insurance on an occurrence form. Coverage shall include on-going operations, product/completed operations (minimum of two years following the project completion) and personal and advertising injury, and liability assumed under contract. Minimum limits, as outlined herein, shall be:

Annual Aggregate	\$2,000,000
Each Occurrence	\$1,000,000

The Wichita Airport Authority and the City of Wichita shall be added as primary and non-contributory additional insureds.

LESSEE agrees that in the event of future changes in the law or upon notice by the LESSOR, the minimum levels of insurance required by this Section may be increased within the bounds of commercial reasonableness.

LESSEE agrees, prior to the commencement of the Agreement, to provide LESSOR with copies of certificates, evidencing that such insurance is in full force and effect, and stating the terms thereof. This Agreement shall not commence until certificates of insurance satisfactory to LESSOR are supplied by LESSEE. LESSEE shall provide LESSOR updated certificates of insurance the earlier of annually, or upon renewal, which certificate shall demonstrate the coverage required in this Section for the ensuing twelve month period. Failure to maintain satisfactory insurance policies in force shall constitute grounds for termination of this Agreement as set forth in Section 23, Termination by LESSOR.

LESSEE shall be solely responsible for obtaining insurance policies that provide coverage for losses of LESSEE-owned personal property. LESSOR shall not provide such insurance coverage for LESSEE-owned personal property, or be responsible for payment of LESSEE's cost for such insurance.

## **20. ALL RISK PROPERTY INSURANCE**

LESSOR, at its expense, throughout the term of this Agreement, shall cause the structures, facilities, improvements and fixtures on the Premises to be insured against loss or damage by fire or other casualty equal to the full replacement value thereof and by an all risk coverage policy furnished by a company licensed to do business in Kansas. Such policy shall not exclude, or in the alternative, shall carry full coverage endorsements for damage from tornado, hail, flood, and sewer backup. The proceeds of any payments made under such insurance policy or policies shall be used to rehabilitate or reconstruct the insured facilities, subject to the provisions governing damage or destruction found at Section 34, Damage or Destruction.

## **21. SUBROGATION OF INSURANCE**

LESSOR hereby waives any and all rights of recovery against LESSEE for or arising out of damage or destruction of the building, or the demised Premises, or any other property of LESSOR, from causes then included under any of LESSOR's property insurance policies, to the extent such damage or destruction is covered by the proceeds of such policies, whether or not such damage or destruction shall have been caused by the negligence of LESSEE, its agents, servants or employees or otherwise, but only to the extent that its insurance policies then in force permit such waiver without diminution of LESSOR coverage.

LESSEE hereby waives any and all rights of recovery against LESSOR for or arising out of damage to or destruction of any property of LESSEE from causes then included under any of LESSEE's property insurance policies, to the extent such damage or destruction is covered by the proceeds of said policies, whether or not such damage or destruction shall have been caused by the negligence of LESSOR, its agents, servants or employees or otherwise, but only to the extent that its insurance policies then in force permit such waiver.

## **22. LOSS OF PERSONAL PROPERTY**

Any personal property of LESSEE or others placed in or upon the Premises shall be at the sole risk of the LESSEE, and LESSOR shall not be responsible or liable for any loss, damage and replacement thereto, regardless of the cause of such loss or damage, and the LESSEE waives all rights of subrogation against recovery from the LESSOR for such loss or damage unless such loss or damage is the result of the LESSOR's negligence.

### **23. TERMINATION BY LESSOR**

The LESSOR, in addition to any other rights to which it may be entitled by law or otherwise, may terminate this Agreement by giving LESSEE written notice in the event of default by LESSEE under this Agreement failing to be resolved in less than sixty (60) days after the LESSEE's receipt of written notice of such event of default and opportunity to cure from the LESSOR, upon or after the happening of any one of the following events:

- (a) LESSEE shall file a voluntary petition in bankruptcy or that proceedings in bankruptcy shall be instituted against it and LESSEE is thereafter adjudicated bankrupt pursuant to such proceedings;
- (b) A court shall take jurisdiction of LESSEE and its assets pursuant to proceedings brought under the provisions of any Federal reorganization act;
- (c) Receiver of LESSEE's assets shall be appointed;
- (d) LESSEE shall be divested of its estate herein by other operation of law;
- (e) LESSEE shall fail to perform, keep and observe any of the obligations, terms, warranties or conditions contained in this Agreement that on the part of LESSEE are to be performed, kept or observed.

If any such condition or default cannot reasonably be corrected within the sixty (60) day period and LESSEE has demonstrated due diligence with respect to curing said default, then, at the LESSOR's sole discretion, such cure period may be extended for consecutive periods of thirty (30) days, as long as diligent progress is made toward cure, with a reasonably foreseeable resolution date. Under such circumstances, default may be treated as cured until cured. Should diligent progress cease, or the reason for default become apparent as insoluble, then the Term shall cease and expire at the end of the thirty (30) day extension then in effect.

Acceptance of rental by LESSOR for any period or periods after a notice of default is issued by LESSOR of any of the obligations, terms, warranties and conditions herein contained to be performed, kept and observed by LESSEE shall not be deemed a waiver of any other right on the part of LESSOR to terminate this Agreement for failure by LESSEE so to perform, keep and observe any of the obligations, terms, warranties, or conditions hereof to be performed, kept and observed. No waiver of default by LESSOR of any of the obligations, terms, warranties or conditions hereof to be performed, kept and observed by LESSEE, shall be construed to be or act as a waiver of any subsequent default of any of the obligations, terms, warranties or conditions herein contained to be performed, kept and observed by LESSEE.

## **24. TERMINATION BY LESSEE**

The LESSEE, in addition to any other rights to which it may be entitled by law or otherwise, may terminate this Agreement by giving LESSOR written notice in the event of default by LESSOR under this Agreement continuing for more than sixty (60) days after the LESSOR's receipt of written notice of such event of default and opportunity to cure from the LESSEE, upon or after the happening of any one of the following events:

(a) Issuance by any court of competent jurisdiction of a permanent injunction in any way preventing or restraining the use of the Airport or any major part thereof for Airport purposes and the remaining in full force of such permanent injunction for a period of at least one hundred and eighty (180) days.

(b) Inability of the LESSEE to use, for a period in excess of one hundred and eighty (180) days, the Airport or any part of the facility because of any law, order, rule, regulation or other action or non-action of the Federal Aviation Administration or any other governmental authority, or because of fire, earthquake, other casualties or acts of God or the public enemy.

(c) LESSOR shall fail to perform, keep and observe any of the obligations, terms, warranties or conditions contained in this Agreement that on the part of LESSOR are to be performed, kept or observed:

- i. LESSEE may give LESSOR written notice to correct such condition or cure such default, and if any such condition or default shall continue for sixty (60) days after receipt of such notice by LESSOR, LESSEE may terminate this Agreement and the Term hereof shall cease and expire at the end of such sixty (60) days in the same manner and to the same effect as if it were the expiration of the Term, unless such condition or default cannot reasonably be corrected within the sixty (60) day period and LESSOR has demonstrated due diligence with respect to curing said default, then such cure period may be extended for consecutive periods of 30 days, as long as diligent progress is made toward cure, with a reasonably foreseeable resolution date. Under such circumstances, default may be treated as cured until cured. Should diligent progress cease, or the reason for default become apparent as insoluble, then the Term shall cease and expire at the end of the thirty (30) day extension then in effect;

(d) Assumption by the United States Government or any other authorized agency thereof of the operation, control or use of the Airport and the facility herein described, or of any substantial part or parts thereof in such a manner as to substantially restrict the LESSEE for a period of one hundred and eighty (180) days from operating on and within the facility.

(e) In the event of destruction of the facilities, improvements, or the demised Premises as more fully described in Section 34, Damage or Destruction.

## **25. MAINTENANCE AND REPAIR**

LESSEE, at its sole expense, shall at all times keep and maintain said Premises in a clean and sightly condition, free of trash, debris and obstructions. LESSEE shall maintain and keep in repair at its own expense the interior of said Premises, keeping the same in proper condition, including painting, light bulb replacement, carpet cleaning and any other minor repairs required to keep the Premises in proper condition.

LESSEE shall be responsible for all janitorial service within the Premises, and shall provide daily routine premises clean-up work and trash removal to keep the Premises and Preferential Use Premises in good and tenable condition through the term of this Agreement.

LESSOR shall be responsible for structural repairs to the building (including walls and foundation), ballast replacement and for damages to property or equipment covered by insurance. Notwithstanding any other provisions in this Agreement, LESSOR hereby represents and warrants that all electrical, plumbing, heating and air conditioning and mechanical systems located at the Premises are in good working condition upon commencement of this Agreement. LESSOR shall keep same in good working condition.

LESSOR shall provide and maintain landscaping and window washing during the Term of this Agreement.

LESSOR shall be responsible for maintenance, repair and replacement of common use paved surfaces, airfield edge lighting system, and storm drainage systems on the Airport not within or upon the Premises. LESSOR shall be responsible for maintenance, repair and replacement of the primary electrical system on the Airport and within or upon the Premises.

LESSOR, its agents or employees, shall have the right to enter upon said Premises at any and all reasonable times to inspect the condition of the same. Should LESSEE refuse, neglect or to meet the established maintenance and repair obligations for all improvements, LESSOR may, but is not required to, accomplish the needed repairs by Airport staff or a contract with a third party, with such repairs being made at LESSEE's expense. A twelve percent (12%) administrative fee shall be charged on any task that is performed by the LESSOR or its agent on behalf of LESSEE upon thirty (30) days prior written notice of its intent to do so. The fee shall be applied to the total cost incurred by the LESSOR in performing the task. The fee represents the LESSOR's cost to manage the task including procurement services, approval processes, management staff time, supervision and overhead. In case of emergency action taken in order to protect against personal injury or property damage but not limited to, for which no notice is necessary, LESSOR shall charge the same cost to the expense of LESSEE and a twenty percent (20%) administrative fee.

## **26. EXTERIOR SIGNS AND ADVERTISING**

LESSEE agrees that no signs or advertising material shall be erected on the Premises or on any improvement or facility on the Premises unless the design and layout of such signs and advertising material, together with the materials and method of construction of such signs and advertising material, shall have been approved in advance in writing by LESSOR, which approval shall not be unreasonably withheld or unduly delayed.

LESSEE shall not erect, install, operate, nor cause or permit to be erected, installed, or operated upon any non-leased Premises of the Airport property, any signs, banners, or other similar devices for its own business, or the business of others. This provision shall not have the effect of limiting or restricting LESSEE's right to enter into an agreement with LESSOR'S authorized and permitted marketing, advertising or signage agency for the display of informational, marketing or advertising media at approved designated locations on Airport property.

LESSEE shall have not right to erect or install, or cause or consent to be erected or installed any commercial outdoor advertising by an outdoor commercial advertising agency.

## **27. PORTABLE STORAGE CONTAINERS/STRUCTURES**

Unless specifically approved in writing, and under conditions specified by LESSOR, LESSEE shall not place or allow to be placed upon Premises, any type of portable storage container, trailer, unit, box, or barrel which is used to store merchandise and/or equipment and supplies outside of an enclosed permanent building or structure. Unless specifically approved, and under conditions specified by LESSOR, LESSEE shall not place or allow to be placed upon Premises, any type of portable or temporary structure, trailer, mobile home, modular structure or device.

LESSOR will not unreasonably withhold approval of such container(s) and structure(s) if such is of a temporary nature for the purpose of supporting construction, alteration or improvement activity, or other approved project.

## **28. GRANTING OF EASEMENTS**

LESSEE shall not (i) grant easements, licenses and other rights or privileges in the nature of easements with respect to the land, or (ii) release existing easements, licenses, right-of-ways and other rights or privileges, and LESSEE agrees, to the extent that it may legally do so, that it will execute and deliver any instrument necessary or appropriate to confirm and grant or release any such easement, license, right-of-way or other right or privilege or any such agreement or other arrangement, upon receipt by LESSEE of (a) a copy of the instrument of grant or release or of the agreement or other arrangement, and (b) a written application signed by the LESSOR requesting execution and delivery of such instrument, provided that, such grant or release is not detrimental to the proper conduct of the business of LESSEE, and such grant or release will not impair the effective use or interfere with the efficient and economical operation of the facilities. LESSEE shall not request any payment or other consideration for such execution, the same being amply supported by the promises exchanged in this Agreement. Any payments or other consideration received by LESSOR for any such grant or with respect to or under any such agreement or other arrangement shall be and remain the property of LESSOR. The obligations of this Section shall survive termination of this Agreement.

## **29. RULES AND REGULATIONS**

LESSEE, its agents and employees, shall be subject to any and all applicable rules, regulations, Airport Standard Operating Procedures, orders and restrictions which are now in force or which may hereafter be adopted by the Wichita Airport Authority or the City of Wichita, Kansas, in respect to the operation of the Airport; and shall also be subject to any and all applicable laws, statutes, rules, regulations or orders of any governmental authority, federal or state, lawfully exercising authority over the Wichita Dwight D. Eisenhower National Airport or LESSEE's operations conducted hereunder.

LESSOR shall not be liable to LESSEE for any diminution or deprivation of its rights hereunder on account of the exercise of any such authority as in this Section provided, nor shall LESSEE be entitled to terminate this Agreement nor be entitled to seek any damages from LESSOR by reason thereof unless exercise of such authority shall so interfere with LESSEE's exercise of the rights hereunder as to constitute a termination of this Agreement by operation of law in accordance with the laws of the State of Kansas, or as set out in Section 24, Termination by LESSEE.

### **30. MINIMUM STANDARDS FOR AERONAUTICAL ACTIVITIES**

LESSOR may, with due notice, from time-to-time, adopt and enforce reasonable Minimum Standards for Aeronautical Activities on the Airport, and amendments thereto, and the LESSEE agrees to observe and comply with the same. However, any minimum standards which may be developed and promulgated in the future and during the Term of this Agreement shall not have the effect of imposing upon LESSEE the requirements of additional facilities, services or standards beyond that set forth in this Agreement.

### **31. ENCROACHERS, TRESSPASSERS AND OTHER THIRD PARTY HAZARDS**

LESSEE shall lawfully remove, or cause to be removed by LESSOR or other official law enforcement agency, all encroachers, trespassers and other third parties violating laws of the federal, state or local government, or who are not on the Premises for legitimate purposes.

### **32. ENVIRONMENTAL COVENANTS**

(a) The LESSEE hereby covenants that it shall not cause or permit any Hazardous Substances to be placed, held, located, or disposed of, on, under or at the Premises and storage tank or within the vicinity, shown on the attached Exhibits A and B, other than in the ordinary course of business and in compliance with all applicable laws.

(b) In furtherance and not in limitation of any indemnity elsewhere provided in this Agreement to the LESSOR, the LESSEE hereby agrees to indemnify and hold harmless the LESSOR and the City of Wichita from and against any and all losses, liabilities, including strict liability, damages, injuries, expenses, including reasonable attorneys' fees, costs of any settlement or judgment and claims of any and every kind whatsoever paid, incurred or suffered by, or asserted against, the LESSOR or the City of Wichita by any person or entity for or arising out of the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission, discharging or release from the Premises during the Term of this Use and Lease Agreement of any Substance (hazardous or otherwise) regulated by any applicable statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to or imposing liability, including strict liability, or standards of conduct concerning, any Hazardous Substance (including, without limitation, any losses, liabilities, reasonable attorneys' fees, costs of any settlement or judgment or claims asserted or arising under the Comprehensive Environmental Response, Compensation and Liability Act, any federal, state or local so-called "Superfund" or "Super lien" laws), if such presence, escape, seepage, leakage, spillage, discharge, emission was caused by the LESSEE, or



persons within the control of the LESSEE, its officers, employees, agents, contractors, invitees and/or licensees, or if such Substance (hazardous or otherwise) was owned by, or located on the Premises by, the LESSEE (without regard to the actual cause of any escape, seepage, leakage, spillage, discharge, emission or release).

(c) If, during the Term of this Agreement, the LESSEE receives any notice of (i) the happening of any event involving the use (other than in the ordinary course of business and in compliance with all applicable laws), spill, release, leak, seepage, discharge or cleanup of any Substance (hazardous or otherwise) on the Premises or in connection with the LESSEE's operations thereon or (ii) any complaint, order, citation or notice with regard to air emissions, water discharges, or any other environmental, health, or safety matter affecting the LESSEE from any persons or entity (including, without limitation, the United States Environmental Protection Agency (the "EPA") or the Kansas Department of Health and Environment ("KDHE")), the LESSEE shall immediately notify the LESSOR in writing of said notice.

(d) The LESSOR shall have the right, but not the obligation, and without limitation of the LESSOR's other rights under this Agreement, to enter the Premises or to take such other actions as deemed necessary or advisable to inspect, clean up, remove, resolve or minimize the impact of, or to otherwise deal with, any Substance (hazardous or otherwise) or environmental complaint following receipt of any notice from any person, including, without limitation, the EPA or KDHE, asserting the existence of any Substance (hazardous or otherwise) or an environmental complaint pertaining to the Premises or any part thereof which, if true, could result in an order, suit or other action against the LESSEE and/or which, in the reasonable judgment of the LESSOR, could jeopardize its interests under this Agreement. If such conditions are caused by circumstances within the control of the LESSEE or if such circumstances result from a Substance (hazardous or otherwise) owned by, or located on the Premises by, the LESSEE (without regard to the actual cause of any escape, seepage, leakage, spillage, discharge, emission or release) all reasonable costs and expenses incurred by the LESSOR in the exercise of any such rights shall be payable by the LESSEE, within 15 days of written demand by Landlord.

(e) If an event of default shall have occurred and be continuing, the LESSEE at the request of the LESSOR shall periodically perform, at the LESSEE's expense, an environmental audit and, if reasonably deemed necessary by the LESSOR, an environmental risk assessment, of the Premises, or the hazardous waste management practices and/or hazardous waste disposal sites used by the LESSEE with respect to the Premises. Such audits and/or risk assessments shall be conducted by an environmental consultant satisfactory to the LESSOR, and all environmental audits and environmental risk assessments must be reasonable satisfactory to the LESSOR. Should the LESSEE fail to perform any such environmental audit or risk assessment within 90 days of the written request of the LESSOR, the LESSOR shall have the right, but not the obligation, to retain an environmental consultant to perform any such environmental audit or risk assessment. All costs and expenses incurred by the LESSOR in the exercise of such rights shall be payable by the LESSEE on demand.

(f) Neither LESSEE nor LESSOR shall install or permit to be installed in the Premises friable asbestos, electrical equipment containing polychlorinated biphenyls, or any Substance containing asbestos and deemed hazardous by federal or state regulations applicable to the Premises and respecting such material. The LESSEE shall defend, indemnify, and save the LESSOR and the City of Wichita harmless from all costs and expenses (including consequential damages) asserted or proven against the LESSEE by any person, as a result of the presence of said Substances, and the costs of any removal or compliance with such regulations, if said Substance was installed by the LESSEE, or persons within its control.

(g) Subject to any limitations or restrictions imposed by the Kansas Budget Law or Cash Basis Law, the LESSOR hereby agrees to indemnify and hold harmless the LESSEE from and against any and all losses, liabilities, including strict liability, damages, injuries, expenses, including reasonable attorneys' fees, costs of any settlement or judgment and claims of any and every kind whatsoever paid, incurred or suffered by, or asserted against, the LESSEE by any person or entity for, arising out of, the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission, discharging or release from the Premises during the Term of this Agreement and the period prior to the Term of this Agreement of any Substance (hazardous or otherwise) (including, without limitation, any losses, liabilities, reasonable attorneys' fees, costs of any settlement or judgment or claims asserted or arising under the Comprehensive Environmental Response, Compensation and Liability Act, any federal, state or local so-called "Superfund" or "Super lien" laws, or any other applicable statute, law, ordinance, code, rule, regulation, order of decree regulating, relating to or imposing liability, including strict liability, or standards of conduct concerning any Hazardous Substance) unless such presence, escape, seepage, leakage, spillage, discharge, emission or release was caused by the LESSEE, or persons within the control of the LESSEE, its officers, employees, agents, invitees and/or licensees, or if such Substance (hazardous or otherwise) was owned by, or placed upon the Premises by, the LESSEE (without regard to the actual cause of any escape, seepage, leakage, spillage, discharge, emission or release except to the extent such was caused by the LESSOR).

Environmental compliance shall not be limited to those items noted within this Agreement but shall include any current or future federal, state, or local law, statute or regulation, that may be required of LESSEE's operation (storage or use of Substances (hazardous or otherwise), activities of LESSEE's employees or contracted vendor's etc.). LESSEE shall provide LESSOR upon request copies of any plan, training program, training records, material safety data sheet or any other documentation required by said laws.

(h) The provisions of this article shall survive the termination of this Agreement.

### 33. INDEMNITY

To the extent allowed by law, LESSEE, shall protect, defend and hold LESSOR and the City of Wichita and its officers, elected officials, agents and employees completely harmless from and against any and all liabilities, losses, suits, claims, judgments, fines or demands arising by reason of injury or death of any person or damage to any property, including all reasonable costs for investigation and defense thereof (including but not limited to attorney fees, court cost and expert fees), or other liability of any nature whatsoever arising out of or incident to this Agreement and/or the use or occupancy of the Premises or the acts or omissions of LESSEE's officers, agents, employees, contractors, subcontractors, licensees or invitees, regardless of where the injury, death or damage may occur, except to the extent such injury, death or damage is caused by the negligence of LESSOR. The LESSOR shall give to LESSEE reasonable notice of any such claims or actions.

To the extent allowed by law, LESSOR shall protect, defend and hold LESSEE, its officers, members, managers, agents and employees completely harmless from and against all liabilities, losses, suits, claims, judgments, fines or demands arising by reason of injury to or death of any person or damage to any property, including all reasonable costs for investigation and defense thereof (including but not limited to attorney fees, court costs and expert fees), or other liability of any nature whatsoever arising out of or incident to this agreement and/or the use or occupancy of the Premises or the acts of omissions of LESSOR's officers, agents, employees, contractors, subcontractors, licensees or invitees, regardless of where the injury, death or damage may occur, except to the extent such injury, death or damage is caused by the negligence of LESSEE. The LESSEE shall give LESSOR reasonable notice of any such claims or actions.

Should LESSEE, its employees, subcontractors, suppliers, agents, customers, and/or representatives cause any violations of federal, state or local law, regulation or ordinance, and should LESSOR be cited for a fine or penalty for such violation, LESSEE agrees to reimburse LESSOR for any monetary fine or penalty which may be imposed on LESSOR. However, nothing herein shall prevent the LESSEE from contesting the legality, validity or application of such fine or penalty to the full extent LESSEE may be lawfully entitled, nor require LESSOR to pursue such a contest on LESSEE's behalf.

The provisions of this Section shall survive the expiration or termination of this Agreement to the extent that they relate to liabilities, losses, suits, claims, judgments, fines or demands arising from or incident to events occurring during LESSEE'S occupancy of the Premises. The LESSEE shall use counsel reasonably acceptable to LESSOR in carrying out its obligations in this Section.

### **34. DAMAGE OR DESTRUCTION**

In the event that facilities or improvements on the Premises are damaged or destroyed in whole or in part by fire, lightning or any other peril or other casualty during the Term of this Agreement, this Agreement shall remain in full force and effect and LESSEE shall proceed with due diligence to repair, restore, rebuild or replace said damaged or destroyed property or parts thereof to as good a condition as all affected properties were in immediately prior to such damage or destruction, subject to such alterations as LESSEE may elect to make and are permitted in this Agreement. All proceeds from the insurance policies related to such damage or destruction shall be first applied to cover the cost of such repairs or restoration. In alternative, and in LESSOR's discretion to allow and LESSEE's election to exercise, LESSEE may be released from this Agreement upon payment of all demolition and removal costs for damaged or destroyed improvements and payment therefor at the fair market value.

### **35. CONDEMNATION**

If, during the Term, title to, or the temporary use of, all or any part of the Premises shall be condemned by any authority exercising the power of eminent domain, LESSEE shall, within fifteen (15) days after the date of entry of a final order in any eminent domain proceedings granting condemnation, notify LESSOR in writing as to the nature and extent of such condemnation and whether it is practicable for LESSEE to acquire or construct substitute improvements, or whether LESSEE shall elect to terminate this Agreement.

If LESSEE shall determine that such substitution is practicable and desirable and LESSOR shall agree thereto, LESSEE shall forthwith proceed with and complete with reasonable dispatch the acquisition or construction of such substitute improvements. In such case, any net proceeds received from any award or awards with respect to the Premises or any part thereof made in such condemnation or eminent domain proceeds shall be used and applied for the purpose of paying the cost of such substitution. Any proceeds not required for such costs shall be distributed to the parties in pro-rata distributions as their interests may appear based upon Agreement Term remaining and the fair market value of each party's interest at the time the proceeds are received.

If LESSEE shall determine that it is not practicable and desirable to acquire or construct substitute improvements, any net proceeds shall be distributed to the parties in pro-rata distributions as their interests may appear based upon the Agreement Term remaining, and the fair market value of each party's interest at the time the proceeds are received.

LESSOR shall cooperate fully with LESSEE in the handling and conduct of any prospective or pending condemnation proceedings with respect to the Premises or any part thereof. In no event shall LESSEE or LESSOR voluntarily settle or consent to the settlement of any prospective or pending condemnation proceedings with respect to the Premises without the mutual agreement and written consent of the other party to this Agreement.

### **36. MODIFICATIONS FOR GRANTING FAA FUNDS**

In the event that the LESSOR determines the Federal Aviation Administration requirements call for modifications or changes to this Agreement as a condition precedent to granting of funds for the improvement of the Airport, these modifications or changes shall supersede this Agreement and LESSEE agrees to consent to such amendments, modifications, revisions, supplements or deletions of any of the terms, conditions or requirements of this Agreement as may be reasonably required by the LESSOR to fully comply with federal grant assurances and directives and to obtain Federal Aviation Administration grants-in-aid, provided that no such changes shall materially alter the rights or obligations of LESSEE hereunder.

### **37. NONDISCRIMINATION**

The LESSEE agrees that it shall not discriminate or permit discrimination against any person on the basis of race, color, sex, religion, disability, age (except where age is a bona fide occupational qualification), national origin or ancestry in its operations or services, and its use or occupancy of property under this Agreement. The LESSEE agrees to comply with all applicable provisions of federal and state laws, regulations, or executive orders prohibiting discriminatory conduct.

### **38. GENERAL PROVISIONS**

**Maintenance, Repair, Direction and Control.** LESSOR reserves the right, but is not obligated to exercise the right, to maintain and keep in repair the landing area of the Airport and all publicly owned facilities of the Airport, together with the right to direct and control all activities of LESSEE in this regard. These areas shall include, but are not limited to, those areas which are necessary to serve the aeronautical users of the Airport, except that LESSOR shall not be obligated to maintain and keep in repair such areas of the Airport as may be leased to or under the control of Airport tenants, whether such area serves aeronautical users or otherwise.

**Brokerage Fees.** The Authority will not permit brokerage fees representing the LESSEE for any Airport property or facilities. All brokerage fees shall be the responsibility of the LESSEE.

**Operation of Airport by the United States of America.** This Agreement and all the provisions hereof shall be subject to whatever right the United States of America now has or in the future may have or acquire, affecting the control, operation, regulation and taking over of said Airport or the exclusive or nonexclusive use of the Airport by the United States during the time of war or national emergency.

**14 CFR Part 77 of Federal Aviation Regulations.** LESSEE agrees to comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations in the event future construction of a building, structure, or attachment thereto is planned for the Premises, or in the event of any planned modification or alteration of any present or future building or structure situated on the Premises. LESSEE by accepting this Agreement expressly agrees for itself, its successors and assigns, that it shall not erect nor permit the erection of any structure or object, nor permit the growth of any tree on the Premises which shall exceed such maximum height as may be stipulated by LESSOR. It is understood and agreed that applicable laws, codes, regulations or agreements concerning height restrictions shall govern the maximum height to be stipulated by LESSOR. In the event the aforesaid covenants are breached, LESSOR reserves the right to enter upon the Premises and to remove the offending structure or object, and cut down the offending tree, all of which shall be at the expense of LESSEE and without liability to LESSOR.

**Airspace.** There is hereby reserved to LESSOR, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the Premises. This public right of flight shall include the right to cause or allow in said airspace, any noise inherent in the operation of any aircraft used for navigation or flight through the said airspace or landing at, taking off from or operation on the Airport. No liability on the part of LESSOR shall result from the exercise of this right.

**Easement for Flight.** LESSEE releases LESSOR from any present or future liability whatsoever and covenants not to sue LESSOR for damages or any other relief based directly or indirectly upon noise, light, vibrations, smoke, fumes, odors, air currents, electronic or other emissions occurring as a result of aviation or airport related operations at or otherwise associated with the Airport. This release and covenant includes but is not limited to claims for damages for physical or emotional injuries, discomfort, inconvenience, property damage, death, interference with use and enjoyment of property, nuisance, or inverse condemnation or for injunctive or other extraordinary or equitable relief. It is further agreed that LESSOR shall have no duty to avoid or mitigate such damages by, without limitation, setting aside or condemning buffer lands, rerouting air traffic, erecting sound or other barriers, establishing curfews, noise or other regulations, relocating airport facilities or operations or taking other measures, except to the extent, if any,

that such actions are validly required by government authority. LESSOR reserves these rights from the Premises an easement for flight of aircraft in or adjacent to the airspace above the Premises and for the existence and imposition over, on and upon said Premises of noise, light, vibrations, smoke, fumes, odors, air currents, electronic or other emissions, discomfort, inconvenience, interference with use and enjoyment, and any consequent reduction in market value which may occur directly or indirectly as a result of aviation, airport or airport-related operations at or otherwise associated with use of the Airport. LESSEE accepts the Premises subject to the risks and activities hereinabove described.

**Airport Hazards.** LESSEE by accepting this Agreement agrees for itself, its successors and assigns, that it shall not make use of the Premises in any manner which may interfere with the landing and taking off of aircraft from the Airport or otherwise constitute a hazard. In the event this Agreement Term is breached, LESSOR reserves the right to enter upon the Premises and cause the abatement of such interference at the expense of LESSEE without liability to LESSOR of any kind.

**Airport Rules and Regulations, Policies, and Standard Operating Procedures.** LESSOR shall have the right to adopt, amend and enforce reasonable airport rules and regulations, policies and standard operating procedures with respect to use of and the conduct and operation of the Airport, its buildings and facilities or any improvements within the present or future boundaries of the Airport, which LESSEE agrees to observe and obey.

**Federal Aviation Administration Requirements.** LESSOR and LESSEE agree that the requirements of the FAA set out below are approved by both parties, and if applicable, LESSEE agrees to comply with all FAA requirements with respect to its operations, use of the Airport and this Agreement:

(a) The LESSEE, for itself and its representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that in the event facilities are constructed, maintained or otherwise operated on said property described in this Agreement for a purpose for which a Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, the LESSEE shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

(b) The LESSEE, for itself and its representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that: (1) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of

said facilities, (2) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the LESSEE shall use the Premises in compliance with all other requirements imposed by or pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

(c) The LESSEE assures that it shall undertake an affirmative action program if required by 14 CFR Part 152, Subpart E, to insure that no person shall on the grounds of race, creed, color, national origin, or sex be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. The LESSEE assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this subpart. The LESSEE assures that it shall require that its covered suborganizations provide assurances to the LESSEE that they similarly shall undertake affirmative action programs, and that they shall require assurances from their suborganizations, as required by 14 CFR Part 152, Subpart E, to the same effect.

(d) It is understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right within the meaning of Section 308 of the Federal Aviation Act of 1958.

(e) LESSEE agrees to furnish service on a fair, equal and not unjustly discriminatory basis to all users thereof, and to charge fair, reasonable and not unjustly discriminatory prices for each unit or service; PROVIDED, that LESSEE may make reasonable and nondiscriminatory discounts, rebates or other similar types of price reductions to volume purchasers.

(f) LESSOR reserves the right (but shall not be obligated to LESSEE) to maintain and keep in repair the landing area of the airport and all publicly-owned facilities of the airport, together with the right to direct and control all activities of LESSEE in this regard.

(g) LESSOR reserves the right further to develop or improve the landing area and all publicly-owned air navigation facilities of the airport as it sees fit, regardless of the desires or views of LESSEE, and without interference or hindrance.

(h) LESSOR reserves the right to take any action it considers necessary to protect the aerial approaches of the airport against obstruction, together with the right to prevent LESSEE from erecting, or permitting to be erected, any building or other structure on the airport which, in the opinion of LESSOR, would limit the usefulness of the airport or constitute a hazard to aircraft.



(i) During time of war or national emergency LESSOR shall have the right to enter into an agreement with the United States Government for military or naval use of part or all of the landing area, the publicly-owned air navigation facilities and/or other areas or facilities of the airport. If any such agreement is executed, the provisions of this instrument, insofar as they are inconsistent with the provisions of the agreement with the Government, shall be suspended.

(j) It is understood and agreed that the rights granted by this agreement shall not be exercised in such a way as to interfere with or adversely affect the use, operation, maintenance or development of the airport.

(k) There is hereby reserved to LESSOR, its successors and assigns, for the use and benefit of the public, a free and unrestricted right of flight for the passage of aircraft in the air space above the surface of the Premises herein conveyed, together with the right to cause in said airspace such noise as may be inherent in the operation of aircraft now known or hereafter used for navigation of or flight in the air, using said airspace or landing at, taking off from or operating on or about the airport.

(l) This Agreement shall become subordinate to provisions of any existing or future agreement between the LESSOR and the United States of America or any agency thereof relative to the operation, development or maintenance of the airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the development of the Airport.

**Subordination to Agreements with the U.S. Government.** This Agreement is subject and subordinate to the provisions of any agreements heretofore or hereafter made between LESSOR and the United States Government relative to the operation or maintenance of Airport, the execution of which has been required as a condition precedent to the transfer of federal rights or property to LESSOR for Airport purposes, or the expenditure of federal funds for the improvement or development of Airport, including the expenditure of federal funds for the development of Airport in accordance with the provisions of the Federal Aviation Act of 1958, as it has been amended from time to time. LESSOR covenants that it has no existing agreements with the United States Government in conflict with the express provisions hereof.

**Non-Waiver of Rights.** No waiver or default by either party of any of the terms, warranties, covenants and conditions hereof to be performed, kept and observed by the other party shall be construed as, or shall operate as, a waiver of any subsequent default of any of the terms, warranties, covenants or conditions herein contained, to be performed, kept and observed by the other party.

**Captions.** The captions/headings of the Sections of this Agreement are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope or intent of any provisions of this Agreement, and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.

**Severability and Invalid Provisions.** In the event any term, covenant, condition or provision herein contained is held to be invalid by any court of competent jurisdiction, the invalidity of any such term, covenant, condition or provision shall in no way affect any other term, covenant, condition or provision herein contained; provided, however, that the invalidity of any such term, covenant, condition or provision does not materially prejudice either the LESSOR or the LESSEE in their respective rights and obligations contained in the valid terms, covenants, conditions or provisions in this agreement.

**Waiver of Claims.** LESSEE hereby waives any claim against LESSOR and its officers or employees for loss of anticipated profits, consequential or incidental damages, or claim for attorney fees caused by or resulting any suit or proceedings directly or indirectly attacking the validity of Agreement or any part thereof, or the manner in which it is executed or performed, or by any judgment or award in any legal proceeding declaring this Agreement null, void or voidable, or delaying the same of any part thereof, from being carried out. This waiver extends to all claims, whether the supporting legal theory lies in common law or has a statutory basis.

**Incorporation of Exhibits.** All exhibits referred to in this Agreement are intended to be and are hereby specifically made a part of this Agreement.

**Incorporation of Required Provisions.** The parties incorporate in this Agreement by this reference all provisions lawfully required to be contained herein by any governmental body or agency.

**Non-Liability of Agents and Employees.** No manager, member, officer, agent or employee of either party to this Agreement shall be charged personally, or held contractually liable by or to the other party under the terms or provisions of this Agreement, or because of any breach thereof or because of its or their execution or attempted execution.

**Successors and Assigns Bound.** This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto where permitted by this Agreement.

**Time of Essence.** Time is of the essence in this Agreement.

**Relationship of the Parties.** It is understood LESSEE is not in any way or for any purpose a partner or joint venturer with or an agent of LESSOR. LESSEE shall act as an independent contractor in the performance of its duties pursuant to this Agreement.

**Interpretation.** LESSOR and LESSEE hereby agree that this Agreement shall not be construed or interpreted in favor of either party on the basis of preparation.

**Kansas Laws to Govern.** This Agreement is created in the State of Kansas and the terms and conditions herein contained shall at all times be governed, interpreted and construed under and in accordance with the laws of the State of Kansas, and venue for resolution of any issue pertaining to this Agreement shall be in Sedgwick County, Kansas.

### **39. FORCE MAJEURE**

Anything contained in this Agreement to the contrary notwithstanding, neither Party shall be deemed in default with respect to the performance of any of the terms, covenants, and conditions of this Agreement if non-performance shall be due to any "Act of God" or "Force Majeure" which terms are defined for purposes of this Agreement as strikes, lockouts, civil commotion, riots, material or labor restrictions by any governmental authority, explosions, earthquakes, fire, floods, catastrophic weather events, acts of the public enemy, wars, acts of terrorism, or insurrections. The occurrence of any Act of God or Force Majeure shall be excused for the period of the delay thus occasioned and the period for performance of any such acts shall be extended for a period equivalent to the period of such delay.

### **40. THIRD PARTY RIGHTS**

It is agreed between the parties that it is not intended by any of the provisions of this Agreement to create for the public or any member thereof the status of a third-party beneficiary, or to authorize anyone not a party to this Agreement to maintain a suit for damages pursuant to the terms or provisions of this Agreement.

#### **41. QUIET ENJOYMENT**

LESSOR agrees that, on payment of the rentals and fees and performance of the terms, covenants, conditions and agreements on the part of LESSEE to be performed in this Agreement, LESSEE shall have the right to peaceably occupy and enjoy the Premises, subject however, to the provisions otherwise set out in this Agreement.

#### **42. HOLD OVER**

In the event LESSEE holds over the lease of the Premises, any rights granted after expiration of this Agreement without any written renewal of it shall not be deemed to operate as a renewal or extension of this Agreement, but shall only create a month-to-month arrangement, which may be terminated within thirty (30) day notice by LESSOR or LESSEE.

#### **43. SURRENDER OF POSSESSION AND RESTORATION**

LESSEE shall yield and deliver to LESSOR possession of the Premises at the expiration or termination of this Agreement in good condition in accordance with LESSEE's obligations in this Agreement, except for reasonable wear and tear. LESSEE is relieved of financial responsibility for fire or other casualty for which full insurance compensation has been paid as agreed. LESSEE shall, at its expense, deliver the Premises in good order and condition, including:

- a) cleaning and hauling away all supplies and trash;
- b) removing by legal means all materials or other substances classified as hazardous;
- c) leaving in operating condition all bulbs and ballasts in Exclusive Use areas;
- d) replacing all broken glass; and
- e) return to LESSOR all keys and security access and ID media to all doors and gates.

LESSEE, at LESSEE's expense, shall remove prior to the termination or expiration of this Agreement all fixtures, non-attached equipment and personal property placed by LESSEE on or about the Premises herein leased, subject to LESSEE's repairing any damage thereto caused by such removal and subject to any valid lien which LESSOR may have on that property for unpaid rents, expenses or fees.

In the event LESSEE does not remove all of its equipment and personal property within thirty (30) calendar days after the termination of this Agreement, any remaining property shall be

considered abandoned and LESSOR may take possession and use for its own purposes, or alternatively dispose of said property without any further responsibility or liability to LESSEE. The net disposal costs of such property shall be the financial obligation of LESSEE.

#### **44. INTENTION OF PARTIES**

This Agreement is intended solely for the benefit of LESSOR and LESSEE and is not intended to benefit, either directly or indirectly, any third party or member(s) of the public at large. Any work done or inspection of the Premises performed by LESSOR is solely for the benefit of LESSOR and LESSEE.

Nothing contained herein shall be deemed or construed by the parties hereto, or by any third party, as creating the relationship of principal and agent, partners, joint ventures, or any other similar such relationship, between the parties hereto. Further, non-parties to this Agreement may not maintain a suit for personal injuries or property damage pursuant to the terms or provisions of the Agreement. The parties shall understand and agree that neither the method of payment, nor any other provision contained herein, nor any act(s) of the parties hereto creates a relationship other than the relationship of the LESSOR and the LESSEE.

#### **45. ENTIRE AGREEMENT**

The parties understand and agree that this instrument contains the entire Agreement between them. The parties hereto further understand and agree that the other party and its agents have made no representations or promises with respect to the Agreement or the making or entry into this Agreement, except as expressed in this Agreement, and that no claim or liability or cause for termination shall be asserted by either party against the other and such party shall not be liable by reason of, the making of any representations or promises not expressly stated in this Agreement, any other written or oral agreement with the other being expressly waived.

The individuals executing this Agreement personally warrant that they have full authority to execute this Agreement on behalf of the entity for which they are acting herein.

The parties hereto acknowledge that they have thoroughly read this Agreement, including any exhibits or attachments hereto, and have sought and received whatever competent advice and counsel deemed necessary for them to form a full and complete understanding of all rights and obligations herein.

#### 46. AMENDMENT

No amendment, modification, or alteration of the terms of this Agreement shall be binding unless the same is in writing, dated subsequent to the date hereof, and duly executed by the parties hereto.

#### 47. APPROVAL, CONSENT, DIRECTION OR DESIGNATION BY LESSOR

Wherever under this Agreement, approvals, consents, directions, or designations are required or permitted, such approvals, consents, directions, or designations required or permitted under this Agreement shall be performed by the Director of Airports, or his/her authorized representative. Approvals, consents, directions, or designations made at any time by the Director of Airports, and from time to time, may be withdrawn or modified by notice from LESSOR to LESSEE.

IN WITNESS WHEREOF, the parties hereto have executed this agreement the day and year first above written.

ATTEST:

THE WICHITA AIRPORT AUTHORITY  
WICHITA, KANSAS

By \_\_\_\_\_  
Karen Sublett, City Clerk


By \_\_\_\_\_  
Jeff Longwell, President  
"LESSOR"

By  \_\_\_\_\_  
Victor D. White, Director of Airports

ATTEST:

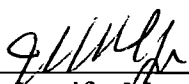
CALDWELL TRANSPORT COMPANY, LLC

By \_\_\_\_\_

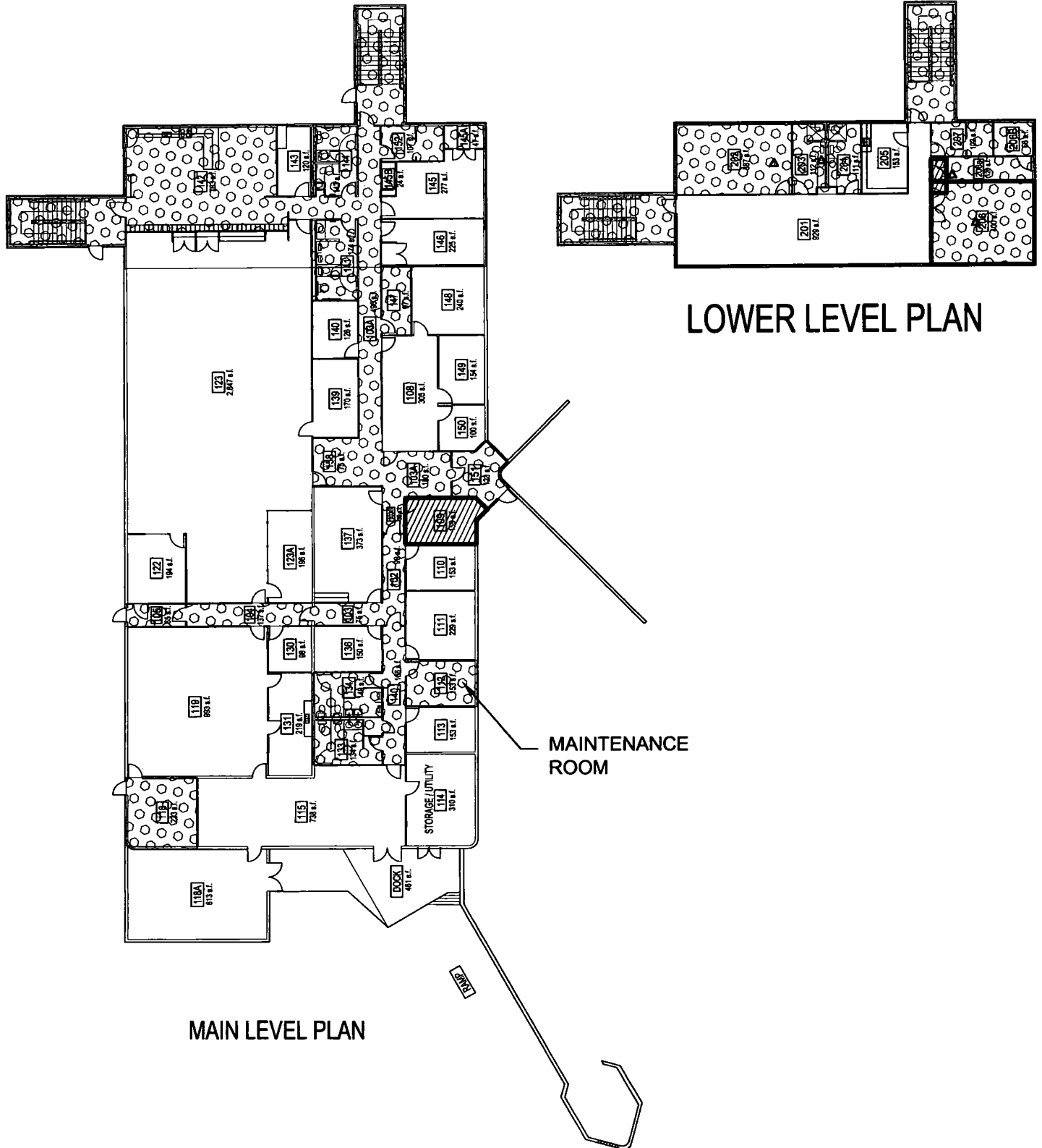
By  \_\_\_\_\_

Title \_\_\_\_\_

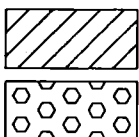
Travis Robbins, COO  
"LESSEE"

APPROVED AS TO FORM:  \_\_\_\_\_ Date: 10.3.16  
Jennifer Magaña,  
City Attorney and Director of Law

# EXHIBIT A



## LEGEND



OFFICE AREA = 159 sq.ft.

COMMON AREA

## CALDWELL TRANSPORT

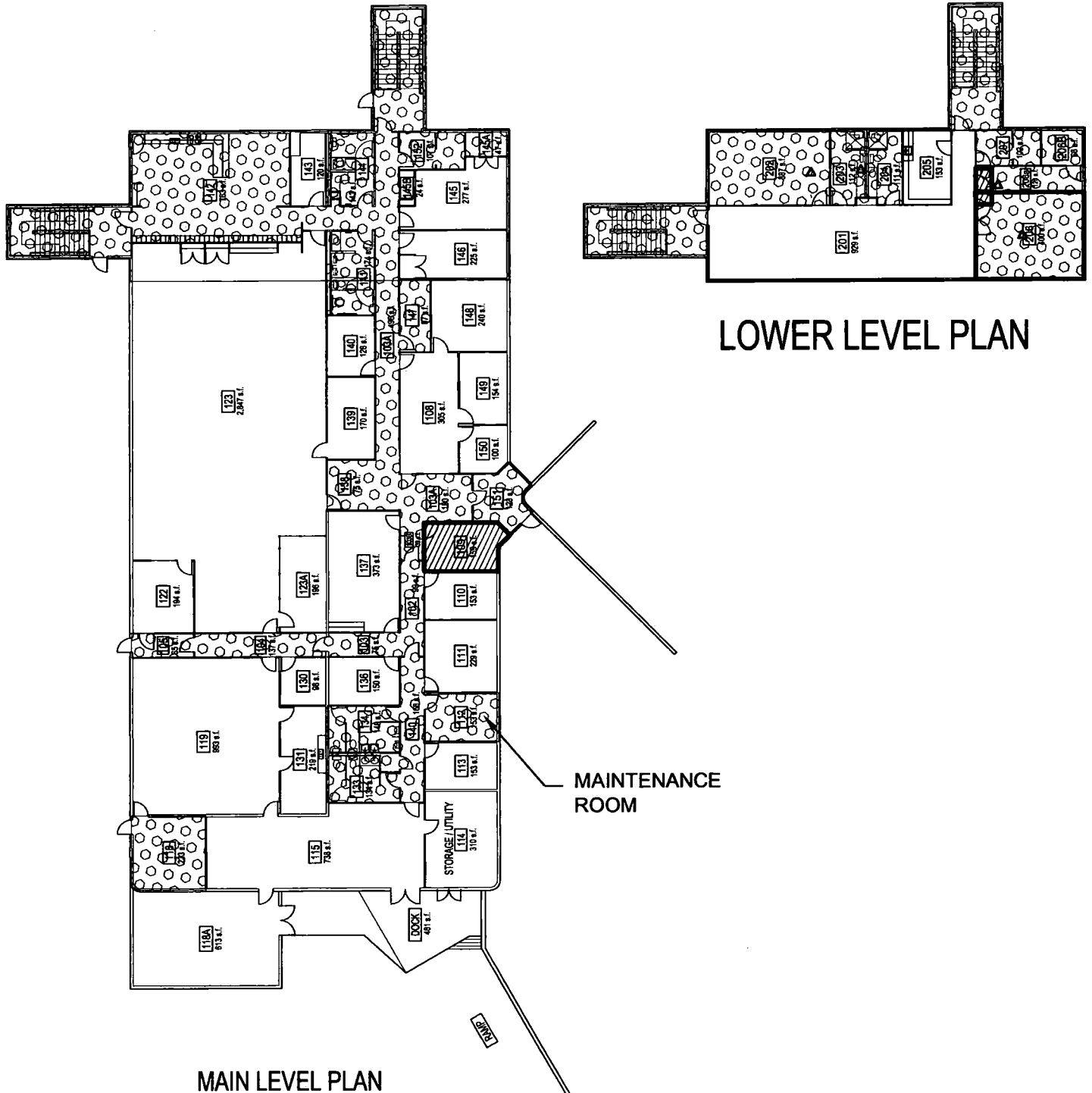
### 1761 AIRPORT ROAD

WICHITA DWIGHT D. EISENHOWER  
NATIONAL AIRPORT

THE WICHITA AIRPORT AUTHORITY  
WICHITA, KANSAS

DATE	DR. BY	SCALE	SHEET
9/23/16	H.G.O.	1" = 30'	1 of 1

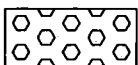
# EXHIBIT A



## LEGEND



OFFICE AREA = 159 sq.ft.



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## CALDWELL TRANSPORT

### 1761 AIRPORT ROAD

WICHITA DWIGHT D. EISENHOWER  
NATIONAL AIRPORT

THE WICHITA AIRPORT AUTHORITY  
WICHITA, KANSAS

DATE	DR. BY	SCALE	SHEET
9/23/16	H.G.O.	1" = 30'	1 of 1



City of Wichita  
City Council Meeting  
October 18, 2016

**TO:** Wichita Airport Authority

**SUBJECT:** Integrated Airline Services, Inc. – Supplemental Agreement No. 1  
Wichita Dwight D. Eisenhower National Airport

**INITIATED BY:** Department of Airports

**AGENDA:** Wichita Airport Authority (Consent)

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**Recommendation:** Approve the supplemental agreement.

**Background:** In July 2010, the Wichita Airport Authority (WAA) approved an agreement with Integrated Airline Services, Inc. (IAS) to lease Suite 700 of the Air Cargo Facility at 1935 Air Cargo Road on the Wichita Dwight D. Eisenhower National Airport (Airport). IAS has had a contract with the United States Postal Service to serve this Airport since 2010. IAS's responsibilities are to break down containers of mail flown into the Airport by FedEx and to then deliver the mail to the Postal Service distribution facility located on the Airport. Additionally, this company picks up items from the Post Office and builds containers for FedEx to transport the mail.

**Analysis:** IAS is desirous of extending the agreement for an additional two-year period with one, two-year renewal option.

**Financial Considerations:** The facility rent for use of the 5,187 sq. ft. first floor is \$10.05 per sq. ft. and use of the 386 sq. ft. of mezzanine space is \$2.51 per sq. ft., which calculates to be \$53,098 annually. The annual rent to the WAA will be an increase of five percent compared to last year.

**Legal Considerations:** The supplemental agreement has been reviewed and approved as to form by the Law Department.

**Recommendations/Actions:** It is recommended that the Wichita Airport Authority approve the supplemental agreement and authorize the necessary signatures.

**Attachment:** Supplemental Agreement No. 1.

SUPPLEMENTAL AGREEMENT NO. 1

By and Between

WICHITA AIRPORT AUTHORITY  
Wichita, Kansas

and

INTEGRATED AIRLINE SERVICES, INC.

for

Wichita Dwight D. Eisenhower National Airport  
Use of Space in Cargo Building  
Wichita, Kansas

THIS SUPPLEMENTAL AGREEMENT NO. 1 is entered into this October 18, 2016, between The Wichita Airport Authority, Wichita, Kansas (LESSOR) and Integrated Airline Services Inc., (LESSEE).

WHEREAS, the parties previously entered into an Agreement, dated July 27, 2010 for the use of the Cargo Building located at 1935 Cargo Road, Suite 800, to be used and occupied for aviation purposes or purposes incidental or related thereto, with its business of air freight carrier and/or handling service at the Airport; and

WHEREAS, the LESSOR and LESSEE now wish to enter into this Supplemental Agreement No. 1 for the purpose of modifying the term and facility rent of this Agreement;

NOW, THEREFORE, in consideration of the mutual promises and agreements herein set forth, LESSOR and LESSEE do hereby agree as follows:

## 1. TERM

Article 3 – Term, Agreement dated July 27, 2010, shall be **replaced** to include the following:

The term of this Agreement shall be extended from the original Agreement, dated July 27, 2010, for an additional two-year period, expiring on June 30, 2018.

## 2. RENEWAL OPTION

Article 4 – Renewal Options, Agreement dated July 27, 2010, shall be **replaced** by the following:

This Agreement may be renewed at the LESSEE's option for one (1), consecutive two (2) year-period ("Option Term") expiring on June 30, 2020, provided LESSEE is not in default hereunder beyond any applicable grace or cure periods in Rent or other payments to LESSOR at the time notice requesting exercising the Option Term is given.

If LESSEE wishes to exercise an Option Term, written notice shall be submitted to LESSOR no less than ninety (90) days prior to the expiration Term. If LESSEE is in default of any obligation under this Agreement then any notice attempting to exercise the Option Term(s) shall be void.

## 3. FACILITY RENT DURING TERM

Section 5 – Facility Rent During Initial Term, dated May 3, 2016, shall be **modified** by the following:

During this extension, facility rent shall be based upon the 5,187 sq. ft. of the first floor cargo building space at the annual rate of ten dollars and five cents (\$10.05). In addition, the 386 sq. ft. of mezzanine space, which shall be twenty-five percent (25%) of the rate assessed for the first floor cargo building space; as a result, the annual rate of two dollars and fifty-one cents (\$2.51).

Therefore, the annual rent for the combined spaces, consisting of 5,573, shall be \$53,098.20, payable in monthly installments of \$4,424.85, due on the first day of each month during the term of this Supplemental Agreement No. 1.

#### **4. CANCELLATION BY LESSEE**

It is acknowledged by LESSOR that, as of the commencement date of this Agreement, LESSEE is under contract with the United States Postal Service (USPS) for weighing and distributing origination and destination cargo for USPS. It is further acknowledged if the LESSEE and/or USPS cease cargo operations, then LESSEE may cancel this Agreement, by providing written notice to LESSOR no less than forty-five (45) days prior to the termination and continuing to pay rent at the rate provided in Section 5 and 6 prorated until the Premises are vacated.

#### **5. OTHER TERMS**

It is understood and agreed that all other terms and conditions of the existing Agreement between the parties hereto are incorporated herein and reaffirmed. Article 3 Paragraph two of the original agreement shall be omitted.

IN WITNESS WHEREOF, the parties hereto have executed this agreement the day and year first above written.

ATTEST:

THE WICHITA AIRPORT AUTHORITY  
WICHITA, KANSAS

By \_\_\_\_\_  
Karen Sublett, City Clerk

By \_\_\_\_\_  
Jeff Longwell, President  
"LESSOR"


By   
Victor D. White, Director of Airports

ATTEST:

INTEGRATED AIRLINE SERVICES, INC.

By 

By   
Michael A. Duffy, President  
"LESSEE"

APPROVED AS TO FORM:   
Jennifer Magana,  
City Attorney and Director of Law

Date: 10-3-16

Wichita, Kansas  
October 17, 2016  
10:00 a.m., Monday  
Conference Room, 12<sup>th</sup> Floor

MINUTES - BOARD OF BIDS AND CONTRACTS\*

The Board of Bids and Contracts met with Marty Strayer, Administrative Assistant, Public Works and Utilities, Fanny Chan, Accountant, Finance, representing the Director of Finance, John Page, Budget Analyst, Budget Office, Clarence Rose, Senior Buyer, representing Purchasing, and Jamie Hayes, Deputy City Clerk, present.

Minutes of the regular meeting date October 10, 2016, were read and on motion approved.

Bids were opened October 14, 2016, pursuant to advertisements published on:

**WICHITA AIRPORT AUTHORITY/ENGINEERING DIVISION: TSA Build Out & Remodel 2 Offices.**

Defer one week

The Purchasing Division recommended that the contracts be deferred as outlined above.

On motion the Board of Bids recommended that the contracts be deferred as outlined above.

On motion the Board of Bids adjourned.

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Marty Strayer, Administrative Assistant  
Department of Public Works

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Jamie Hayes, CMC  
Deputy City Clerk

**FORMAL BID REPORT**

**TO:** Robert Layton, City Manager

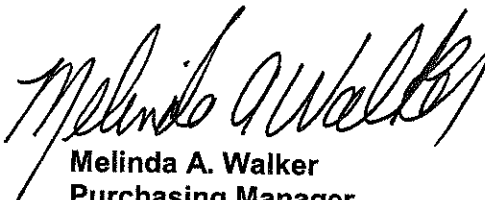
**DATE:** October 17, 2016

**WICHITA AIRPORT AUTHORITY BIDS – VICTOR WHITE, DIRECTOR OF AIRPORTS**

**October 17, 2016**

TSA Office Build Out & Remodel 2 Airline Offices Terminal Building - Wichita Airport Authority/Engineering Div.  
(Defer to October 24, 2016)

**ITEMS TO BE PURCHASED AS ADVERTISED IN THE OFFICIAL CITY NEWSPAPER.**



Melinda A. Walker  
Purchasing Manager

**BID RESULTS**[Registration](#)[Solicitations](#)[Document Inquiry](#)[Login](#)[Help](#)

This page summarizes vendor responses by the bid total. Awarded vendors will be notified of their respective purchase orders/contracts.

**Vendor Group Line****Solicitation:** FB640136 **TSA Build Out & Remodel 2 Offices****Close Date/Time:** 8/12/2016 10:00 AM CST**Solicitation Type:** Formal Bid[Return to the Bid List](#)**Award Method:** Aggregate Cost**Department:** Airport Engineering**Responses:** 4

Vendors	Complete	Bid Total	City Comments
COMPTON CONSTRUCTION CORP	Complete	\$1,112,432.00	Defer to 10-24-16 Wichita Airport Authority/Engineering Division
VOGTS CONSTRUCTION COMPANY	Complete	\$1,118,048.00	
COMMERCE CONSTRUCTION SERVICES INC	Complete	\$1,120,100.00	
VAN ASDALE CONSTRUCTION LLC	Complete	\$1,212,900.00	

NO BIDS WITHIN ENGINEERS ESTIMATE

[Top of the Page](#)